Calendar No. 492

99TH CONGRESS
1st Session

SENATE

REPORT
99-224

HEALTH PLANNING AND RESOURCE ALLOCATION ACT OF 1986

DECEMBER 18 (legislative day, DECEMBER 16), 1985.—Ordered to be printed

Mr. HATCH, from the Committee on Labor and Human Resources, submitted the following

REPORT

[To accompany S. 1855]

The Committee on Labor and Human Resources, to which was referred the bill (S. 1855) to revise the provisions of the Public Health Service Act relating to health planning, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

CONTENTS

		Page
I.	Summary of the bill	1
II.	Background and need for legislation	6
III.	History of the legislation	11
IV.	Text of bill as reported	11
V.	Committee views	33
VI.	Votes in committee	36
VII.	Cost estimate	37
VIII.	Regulatory impact statement	38
IX.	Section-by-section analysis	38
X.	Changes in existing law	51

I. SUMMARY OF THE BILL

HEALTH PLANNING AUTHORITY

S. 1855 amends the existing authority for the health planning program under title XV of the Public Health Service Act to provide for a voluntary program of health planning grants to the States. The effective date would be 120 days after enactment, although the

71-010 O

S543-18

Secretary of Health and Human Services could issue regulations at any time after enactment. The bill authorizes $65.086 million for fiscal year 1986, $69.2 million for fiscal year 1987, and $73.8 million for fiscal year 1988, of which not more than 10 percent could be used to administer the program.

GRANTS TO STATES

S. 1855 provides that grants would be made to the States that apply for them on the basis of population, using the 1980 decennial census. However, the amount of each State's grant would be reduced proportionately, if necessary, to insure that each State receives a minimum grant of $237,600. Any appropriated funds which are not allotted to States or local planning agencies would be distributed among the remaining States or local planning agencies in proportion to the amounts already received by those States or local planning agencies in that fiscal year. Under this title, State is defined as any State, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Northern Mariana Islands, the Virgin Islands, the American Samoa, and the Trust Territory of the Pacific Islands.

USE OF FEDERAL FUNDS FOR HEALTH PLANNING ACTIVITIES

S. 1855 provides that a State may use its Federal funding for health planning and resources development for one or more of the following: studies, analyses, and collection of data concerning the financing and delivery of health care in the State; development of local plans for the allocation of health services and resources; establishment of a certificate of need program; collection and dissemination of purchaser information with respect to health care services; and assessment of the access to health care services by individuals living in rural areas and by individuals who have little or no health insurance. In addition, a State shall use 30 percent of its funds to make grants to local planning agencies except where a State had no local planning agency prior to September 30, 1985.

GRANTS TO LOCAL PLANNING AGENCIES

S. 1855 provides that local planning agencies may use their grants to assist the designated State agencies in health planning and resource allocation and to encourage the development of cost-effective alternatives to current health care financing and delivery systems. The bill limits the State share of the cost of a local health planning agency to 95 percent in fiscal year 1986, 85 percent in fiscal year 1987, and 75 percent in fiscal year 1988 and each succeeding fiscal year.

STATE HEALTH SERVICES AND RESOURCE ALLOCATION AGENCIES

S. 1855 requires the Governor of each State to designate a State agency as the State health services and resource allocation agency. The duties of the designated agency would be to develop and administer a State health plan; develop and administer an administrative program to conduct the health planning program; administer a certificate of need program, if the State chooses to have one;

and prepare an annual report to the Governor on the health planning program.

STATE PLAN

S. 1855 requires that, for the first three fiscal years beginning after the date on which a State plan is prepared, the State plans must contain a description of the needs in the State for health care services and facilities; an inventory of the health care services and facilities in the State; and a comparison of the needs and the inventory, and a statement of how the designated State agency plans to allocate the existing services and facilities to meet the health care needs of the State.

STATE ADVISORY BOARDS

S. 1855 requires each State Governor to appoint a State Advisory Board, representative of health care consumers (both individuals and major purchasers) and health care providers, to assist the designated State agency in its health planning and resource allocation activities. In addition, the bill requires the Advisory Board to prepare and send to the Governor a report containing its comments on the State plan and the annual report of the designated State agency.

ANNUAL REPORT

S. 1855 provides that the designated agency must prepare and send to the Governor by December 1 an annual report which would include a copy of the State plan; a summary of the agency's activities in carrying out any certificate of need program; certain health care expenditure, price, and volume data; and the State Advisory Board report. The bill requires the Governor to send the annual report to the Secretary, together with the Governor's comments on the report, and to publish and make the report and comments available to the public.

CENTERS FOR HEALTH PLANNING

S. 1855 authorizes $1 million from the total amount available under this title to assist two centers for multidisciplinary health planning development and assistance, each located in the geographical half of the continental United States that it would serve. To the extent practicable, the bill requires the Secretary to assist centers that were in existence on September 30, 1985. The bill requires the centers to provide technical and consulting assistance to designated agencies; to conduct research, studies, and analyses of health planning and resources development; and to develop health planning approaches, methodologies, policies, and standards.

CERTIFICATE OF NEED PROGRAM

If a State wishes to have a certificate of need (CON) program, S. 1855 specifies certain requirements for such programs. The CON program must provide for the review and determination of need by the designated agency for proposed major medical equipment, institutional health services, and capital expenditures before such

equipment is acquired, such services are offered or substantial expenditures are undertaken in preparation for such offering, or such capital expenditures are obligated.

The bill provides that if a State has a CON program, CON review must be conducted for equipment, services, and capital expenditures which cost in excess of certain expenditure minimum amounts. For fiscal year 1986, the bill provides for expenditure minimums of $400,000 for major medical equipment, $310,000 for institutional health services, and $1 million for capital expenditures. For future fiscal years, the bill provides for expenditure minimums equal to those required for fiscal year 1986, or, at the State's discretion, the previous year's amount adjusted for the change in an index designated by the Secretary of Health and Human Services.

The bill provides for exemptions for CON review for inpatient institutional health services, major medical equipment, or capital expenditures that will be used by a health maintenance organization (HMO), an inpatient health care facility controlled by an HMO, or a health care facility leased by an HMO. A health care facility or medical equipment which receive an exemption from CON review could not be sold or leased, controlling interest in the facility or equipment or in a lease of the facility or equipment could not be acquired, and the facility could not be used by another person besides the lessee, unless the designated agency issues a certificate of need approving the sale, lease, acquisition, or use, and the new owner or lessee is an HMO.

The bill also provides that an application from an HMO for a certificate of need must be approved by the designated agency if the approval is required to meet the needs of the HMO's members, and if the HMO is unable to provide, through services and facilities which can reasonably be expected to be available to the HMO, its institutional health services in a reasonable and cost-effective manner consistent with the basic method of operation of the HMO.

S. 1855 provides that a CON application for a capital expenditure which is required to eliminate or prevent safety hazards or to comply with State licensure standards or with accreditation standards necessary for reimbursement under the Medicare or Medicaid programs must be approved unless the designated agency finds that the facility or services for which the capital expenditures is proposed are not needed or are not consistent with the State plan. The bill provides that a certificate of need would be required for the obligation of a capital expenditure to acquire (by purchase or lease) an existing health care facility if proper notice is not filed, or if the designated agency finds that the services or the bed capacity of the facility will be changed as a result.

The bill authorizes States to require a certificate of need for the acquisition of major medical equipment (including donations, leases, and transfer for less than fair market value); however, a certificate of need would not be required for such equipment which will not be owned by or located in a health care facility, unless the proper notice has not been filed, or the designated agency finds that the equipment will be used to provide services for hospital inpatients.

S. 1855 provides that a certificate of need would not be required for the acquisition of major medical equipment, the offering of institutional health services, or the obligation of a capital expenditure made solely for research, if the charges for other services at the facility are not affected, and the bed capacity and the services of the facility are not substantially changed.

The bill specifies the procedures a designated agency must use in certificate of need determinations, including at least the following: timely written notice of the beginning of a review; an established time period for the agency's decision, not to exceed 120 days; information and reports required for review; provision for written findings of the basis for a designated agency's decision and timely notification of persons subject to review of the findings; public hearings and access by the public to all applications and other written materials; submission for construction projects of letters of intent early in the planning process; agency decisions based solely on the agency's review and on the record established in administrative proceedings; an appeals mechanism with respect to procedural matters; judicial review of an unfavorable decision; and prohibition of ex parte contacts between an applicant and agency personnel responsible for reviewing the application.

S. 1855 provides the criteria required for CON review, including at least the following: the relationship of the health services being reviewed to the State plan and to any long-range development plan of the applicant; the need of the population for such services; the availability of alternative, less costly, or more effective methods of providing such services; the relationship of the proposed services to the existing health care system in the area; the availability of resources (e.g., health manpower, management personnel, and funds for capital and operating needs) to provide the services, and the availability or alternative uses of such resources; the effect of the proposed services on the clinical needs of health professional training programs in the area; the extent to which health professions schools in the area will have access to the services for training purposes; the accessibility of the proposed services to all residents of the area; the special needs and circumstances of HMOs; the costs and methods of proposed construction projects, including energy provision, and the impact of the project on the costs of providing health care; the need for energy conservation; the effect on competition, quality assurance, and cost-effectiveness; the efficiency and appropriateness of using existing services and facilities similar to those proposed; and the quality of care provided in the past by existing services or facilities requesting CON review.

NATIONAL HEALTH PLANNING AND RESOURCE CONTROL COUNCIL

S. 1855 establishes a National Health Planning and Resource Control Council appointed by the Secretary to review and analyze the annual reports, to advise and assist the Secretary on the report to Congress, and to make recommendations to the Secretary with respect to health care planning and resource allocation. The bill provides that a majority of the fifteen-member Council would be representatives of major purcahsers, two would be heads of desig-

nated agencies, two would be representatives of health care providers, and one would be an individual consumer of health care.

ANNUAL REPORT

S. 1855 requires the Secretary, by March 1 of each year, to prepare and send to Congress a report on the health planning and resources development program, including a summary of State activities; a comparison of the cost of health care in each State and of health care provided by each type of health care provider in a State, with the cost of all other States; national and State data on health care revenues, per capita costs, and volume of services; and a description of changes in the supply of health care resources.

II. Background and Need for Legislation

On Janaury 4, 1975, the National Health Planning and Resources Development Act of 1974 was signed into law as P.L. 93-641. This Act combined and significantly revised existing health planning authorities under the Regional Medical Program (P.L. 89-239) and the Comprehensive Health Planning Program (P.L. 89-749) by establishing a single new program of State and areawide health planning and development under a new title XV of the Public Health Service Act.

The new program was designed to eliminate the overlap and duplication of responsibilities characterizing earlier health planning programs. It was also intended to improve coordination among the various planning bodies and other entities in the health care system. The development of health resources was tied to a stipulated set of priorities and goals contained in the health plans developed by each State and local health planning agency. The new agencies were given broader powers than were their predecessor agencies, particularly in the areas of regulation, control of Federal funds, review and encouragement of resources development, and actual implementation of health plans.

Under P.L. 93-641, the development of new health resources was tied directly to approved State health plans. Health planners were to address themselves to improvements in the health of area residents and in accessibility, acceptability, continuity, and quality of health services; to prevention of unnecessary duplication of resources; and to reductions in the rapidly increasing costs of health care. Local health planning agencies were given funds to encourage development of needed health resources and services in their respective areas. State certificate of need (CON) programs were recognized as the basic component in an effort to control unnecessary expenditures on health care capital, services, and major medical equipment.

The original authorities for title XV of the Public Health Service Act as provided by P.L. 93-641 expired at the end of fiscal year 1977. P.L. 95-83 (signed by the President on August 1, 1977) provided a simple one-year extension of the program without substantive amendment to existing law. Since the deadlines required by the Congressional budget process did not afford the new Administration sufficient time to review the planning law and program and prepare its own policy position and proposals with respect to it, a

one-year extension was provided so that the then Department of Health, Education and Welfare (HEW) could conduct a thorough review and Congress could undertake a full consideration of health planning issues before the next budget reporting deadline.

Also during 1977, Congress enacted as an amendment to the Health Professions Education Amendments of 1977 (P.L. 95-215) a provision to authorize HEW to extend conditional designation agreements with local and State health planning agencies from the 24-month period specified in P.L. 93-641 to a period of up to 36 months. This 12-month extension was provided to give agencies more time to comply with the requirements in title XV for full designation.

Although legislation modifying the health planning law and program was considered by both House and Senate Committees in 1977/1978, no final agreement was reached. The health planning program was continued unchanged in fiscal year 1979 through a continuing resolution (P.L. 95-482) at fiscal year 1978 funding levels.

In 1979, Congress passed the Health Planning and Resources Development Amendments of 1979, a major revision and 3-year authorization of the health planning program for fiscal years 1980-1982 (P.L. 96-79, signed into law October 4, 1979).

In early 1981, the Reagan Administration proposed in its fiscal year 1982 budget request to phase out the health planning program over the 1981-1983 period, consistent with Administrative plans to reduce the Federal regulatory burden on the private sector and to encourage competition in the health care industry. However, Congress did not agree to this proposal, but passed instead provisions in P.L. 97-35, the Omnibus Reconciliation Act of 1981 (August 13, 1981), which substantially reduced fiscal year 1982 authorizations for the health planning program. It also made several other changes to permit greater flexibility in the health planning program, including allowing the Secretary to waive requirements for certain review and data collection activities, allowing a State to request that Federal designation and funding of local health planning agencies in that State be eliminated, extending the effective date for State compliance with certificate of need requirements, and raising the thresholds for certificate of need review.

In its fiscal year 1983 budget proposal, the Administration again called for an elimination of the health planning program in fiscal year 1983. The Administration's rationale for this action is noted below:

> As part of the general effort to restrain health care costs by stimulating competition in the health care industry, the Administration proposes phasing out the Federal health planning program. This program represents an effort to impose a complex national health regulatory program on States and localities. Moreover, it has not proven effective in controlling costs on a national basis, and it inhibits market forces needed to strengthen competition and provide less costly services.

Congress, however, continued the program through fiscal year 1983 under a continuing resolution (P.L. 97-377) at the fiscal year

1982 level of $58.256 million. In subsequent budget proposals (fiscal years 1984–86), the Administration has requested repeal of the health planning legislation, citing the expiration of its authorizing legislation and the need to "reduce the national health regulatory burden on States and localities and to promote the effective functioning of private market forces in the health care sector." Although various legislative proposals have been introduced and considered in the House and Senate to either repeal the health planning program, amend it, or replace it with an alternative program, none has been agreed to by both Houses of Congress. Congress has continued the program at the fiscal year 1982 funding level of $58.256 million through a series of continuing resolutions (P.L. 98–151 for fiscal year 1984, P.L. 98–473 for fiscal year 1985, and P.L. 99–103 and P.L. 99–154 through December 12, 1985).

The future of the health planning program has been debated for years. A number of studies, briefly summarized below, have been used to help analyze the effectiveness of the Federal health planning program:

IOM report on health planning in the United States: Selected policy issues

In January 1981, the Institute of Medicine of the National Academy of Science published the results of a 2-year study on the health planning program. In its summary, the IOM committee formed to study the issue stated that "the current health planning program has substantial potential for helping to achieve certain important social goals, through local planning for improved local health care systems." The report qualified its support by enumerating a series of improvements which should be made in the current program. Noting in particular the program's "built-in limitations of effectiveness," the report pointed to the "lofty and laudable but difficult set of goals" assigned the program and the absence of "any real budgetary or regulatory powers by which to accomplish these goals." In short, the IOM committee felt that health planning had been oversold as a cost-containment strategy while perhaps other equally important and more realistic objectives could have been emphasized.

GAO report on health systems plans: a poor framework for promoting health care improvements (HRD–81–93, June 22, 1981)

A June 1981 General Accounting Office report on the health systems plans developed by HSAs also reviewed various attempts by DHHS and others to examine the cost-effectiveness of health planning. GAO concluded that "evaluating the impact of the health planning program is very difficult and may not produce clear and dramatic evidence concerning the effectiveness of health planning organizations." In particular, GAO took issue with estimates of cost-savings prepared in 1979 by the American Health Planning Association (representing the Nation's HSAs and State agencies). The AHPA had reported that between August 1976 and August 1978, health planning agencies had disapproved or discouraged proposed capital investment projects totaling $3.4 billion. Furthermore, the agencies were reported to have saved the health care system at least $8 for every $1 spent on health planning. GAO

found these estimates to be unreliable and presented evidence from 23 case studies to support its conclusion.

National Council on Health Planning and Development report to the Secretary of HHS

In August 1981, the National Council on Health Planning and Development (which advises the Secretary of HHS on the planning program and its implementation) submitted a report on the future of health planning, based on public testimony from organizations concerned about the proposed phaseout of Federal funding. Among other things, the Council noted that the health planning program:

(1) has restrained what would otherwise have been an unwarranted proliferation of facilities, equipment, and services by providing an independent source of advice for use by communities, States, and third party payers (both public and private);

(2) has played a role in working with local providers and consumers in developing additional necessary health services, including obtaining needed professionals in underserved areas;

(3) has stimulated and upgraded planning efforts by institutions and agencies; and

(4) has fostered the creation of a data base and better analytic techniques for health services in all geographic areas, which are useful for areawide planning and for institutions in the areas.

CBO report on health planning: Issues for reauthorization

A major report on the health planning program prepared by the Congressional Budget Office was published in March 1982. The paper presented an overview of Federal health planning efforts, assessed their effectiveness, and analyzed options for continuing or changing the Federal role. Particular attention was paid to the role of certificate of need (CON) programs in restraining health costs. CBO noted that available evidence on the impact of CON must be interpreted with caution, particularly since most evaluations to date on CON review reflect decisions made before the implementation of the Federal law. CBO noted further that some States have had more favorable experience with CON than other States and that "effects of successful programs could have been diluted sufficiently by the experience in other States to preclude measurement of restraining CON effects in the aggregate." Furthermore, CBO found that CON review may affect the mix of capital projects by forcing hospitals to shift investment toward projects favored by health planning agencies.

In recent years, States have undertaken a number of efforts on their own to contain health care costs. These include voluntary or mandatory rate review or rate setting for hospital payment; caps or moratoria on expenditures for health care facilities, equipment, or services; and mandatory hospital payment systems which apply to all payers for hospital care in the State (including Medicare, Medicaid, commercial insurers, Blue Cross). Other changes have also been made in recent years in methods of payment for medical care services, either by changing reimbursement systems (such as the Medicare program's change to the hospital prospective payment

system) or by changing insurance coverage, including cost saving features (such as numerous private employers are doing). These efforts have had an effect on the rates of increase in health care costs and have contributed to a growing competition among health care providers.

In deliberations over the future of the health planning program, some have suggested that the Federal government still needs to support a national program to plan for health care needs and resources, and to control the way expenditures are made for health care facilities, services, and equipment. Others believe that a mandatory health planning program as is authorized by the existing title XV legislation is not necessary in light of lack of interest in many States, growing competition, and interest in other perhaps more effective and less regulatory cost containment activities. Still others feel that as a practical matter, the health planning program has been continued for too many years under various continuing resolutions without specific authorizing legislation, a thorough evaluation of its activities and need for any changes, and any penalties for noncompliance with program requirements.

The fiscal year 1983 continuing resolution (P.L. 97-377) contained language stating that no penalty could be applied nor any State or agency agreement terminated under the health planning law during fiscal year 1983. This language, which was applied in subsequent continuing resolutions, prohibits the Department of Health and Human Services from terminating agreements and funding for State and local health planning agencies in States that have changed their health planning programs in ways that no longer conform to the title XV authorizing legislation. Such changes include raising the thresholds for determining which projects would require certificate of need (CON) review, changing the types of projects to which CON review would apply, and repealing CON laws or allowing them to expire.

For example, a Status Report on State Certificate of Need Programs (February 1985) prepared by the Office of Health Planning, Department of Health and Human Services, indicated that, based on a June 1984 survey, of the 46 States and 3 Territories that had certificate of need programs, only 21 States and 3 Territories had certificate of need programs whose features complied with Federal requirements. This was a reduction of 4 States with complying CON programs since the March 1983 Status Report. Thirty-six States and 3 Territories had one CON program feature, the thresholds for determining which projects require review, which complied with Federal requirements, leaving 10 States with CON thresholds that were higher (less stringent) than Federal requirements. However, 20 States and 1 Territory had established thresholds which were lower (i.e., more stringent) than the Federal requirements, which is permissable under the Federal health planning program. At that time, 4 States and 1 Territory had no CON program at all.

As of December 1985, there were 8 States and 1 Territory without CON programs: CON authorizing legislation has expired in Arizona, Idaho, Kansas, Minnesota, New Mexico, Texas, and Utah; Louisiana and the Virgin Islands have never had CON laws. Having a CON program is a mandatory requirement under the title XV health planning legislation, but, as mentionned above, no

sanctions can be applied to States that do not comply with these requirements. It is clear that States are using this opportunity to fashion their health planning and CON programs as they wish

III. History of the Legislation

The most recent authorization for the Federal health planning programs expired at the end of Fiscal Year 1982. Since that time, the program has been funded under a continuing resolution despite the fact that it has not been reauthorized.

On May 13, 1985 Senators Weicker and Kennedy introduced S. 1104, "The Health Planning and Resource Allocation Act of 1985." S. 1104 would have replaced the current health planning law with a program which would have required:

(1) States to designate a State health services and resource allocation agency which would be required to develop and administer a State plan and a mandatory certificate of need (CON) program.

(2) State CON programs to review and determine the need for major medical equipment exceeding $400,000, institutional health services exceeding $250,000, and capital expenditures exceeding $1 million.

(3) The Secretary to make grants directly to local health planning agencies.

On August 1, 1985 Senators Quayle and Durenberger introduced S. 1560, "The Health Planning Block Grant of 1986." It would have repealed the current health planning program and replaced it with a voluntary block grant to the States.

S. 1560 provided that States may use their allotments, at their discretion, for any of the following: studies and collection of data on the financing and delivery of health care in the State; development of a State plan including assessments of access to care for indigent and rural populations; development of local and regional plans; review and determination of the need for capital expenditures, major medical equipment, and major expansions of institutional health care services in the States; participation of local, regional, public, and private entities in such reviews and determinations; and, the collection and dissemination of purchaser information with respect to health care services.

S. 1855 was introduced on November 18, 1985 by Senators Quayle, Weicker and Durenberger and represents a compromise between the major provisions of S. 1560 and S. 1855. The most significant feature is that certificate of need will be voluntary but if States choose to have CON programs, they will have to meet requirements very similar to those outlined in S. 1104.

IV. Text of Bill as Reported

A BILL To revise the provisions of the Public Health Service Act relating to health planning

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Health Planning and Resource Allocation Act of 1986".

SEC. 2. It is the purpose of this Act to permit States to have flexibility in health planning activities in order to promote competition in the provision of health care services.

SEC. 3. (a) Title XV of the Public Health Service Act is amended to read as follows:

"TITLE XV—HEALTH PLANNING

"PART A—DEFINITIONS

[]"SEC. 1502.] "SEC. *1501.* For purposes of this title:

[]"(1) The term 'State' means each of the several States and the District of Columbia.]

[]"(2)] *"(1)* The term 'Governor' means the chief executive officer of a State or the designee of such chief executive officer.

[]"(3)] *"(2)* The term 'State health services and resources allocation agency' or 'designated agency' means the State agency which is designated by the Governor of a State to develop the State plan required under section [1516] *1518* and which is responsible for the administration of the State certificate of need program, if any, under part C.

[]"(4)] *"(3)* The term 'local planning agency' means an entity—

"(A) whose primary purpose is health planning and resource allocation;

"(B) which is controlled by a governing body a majority of which are consumers and major purchasers; and

"(C) which is—

"(i) a nonprofit private corporation which is not controlled by any other legal entity and which engages in health planning functions for a defined geographic area consistent with the provisions of this title; or

"(ii) a public regional planning body or single unit of general local government that is authorized by State or local law to carry out health planning functions for a defined geographic area consistent with the provisions of this title.

[]"(5)] *"(4)* The term 'State health services and resources allocation plan' or 'State plan' means a plan submitted by the designated agency and approved by the Governor of the State in accordance with section [1516.] *1518.*

[]"(6)] *"(5)* The term 'State administrative program' or 'State program' means the State administrative program required under section [1517.] *1519.*

[]"(7)] *"(6)* The term 'health care facility' means a private or public hospital, rehabilitation facility, nursing home, or any other health care facility that the Governor of a State may designate by regulation, except that such term does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

[]"(8)] *"(7)* The term 'institutional health services' means health services which (A) are provided through health care facilities, and (B) entail annual operating costs of at least the expenditure minimum. For purposes of this paragraph, the term

'expenditure minimum' means $310,000 for the twelve-month period beginning on October 1, 1985, and for each twelve-month period thereafter, $310,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index designated by the Secretary by regulation for purposes of making such adjustment.

[''(9)] *''(8)* The term 'capital expenditure' means an expenditure—

''(A) made by or on behalf of a health care facility; and

''(B)(i) which (I) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (II) is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

''(ii) which (I) exceeds the expenditure minimum, (II) substantially changes the bed capacity of the facility with respect to which the expenditure is made, or (III) substantially changes the services of such facility.

For purposes of subparagraph (B)(ii)(I), the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B)(i) is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review under part C shall be considered capital expenditures for purposes of such section, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such section if a transfer of the equipment or facilities at fair market value would be subject to review under such section. For purposes of this paragraph, the term 'expenditure minimum' means $1,000,000 for the twelve-month period beginning on October 1, 1985, and for each twelve-month period thereafter, $1,000,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index designated by the Secretary by regulation for purposes of making such adjustment.

[''(10)] *''(9)* The term 'major medical equipment' means medical equipment which is used for the provision of medical and other health services and which costs in excess of the expenditure minimum, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (11) and (12) of section 1861(s) of such Act. In determining whether medical equipment has a value in excess of the expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition

of such equipment shall be included. For purposes of this paragraph and section 1530(e)(3), the term 'expenditure minimum' means $400,000 for the twelve-month period beginning on October 1, 1985, and for each twelve-month period thereafter, $400,000, or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index designated by the Secretary by regulation for purposes of making such adjustment.

[''(11)] *''(10)* The term 'health maintenance organization' means a public or private organization, organized under the laws of any State, which—

''(A) is a qualified health maintenance organization under section 1310(d); or

''(B)(i) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out of area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in clause (i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (I) directly through physicians who are either employees or partners of such organization, or (II) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

[''(12)] *''(11)* The term 'rehabilitation facility' means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

[''(13)] *''(12)* The term 'National Council' means the National Health Planning and Resource Control Council established under section 1541.

''PART B—HEALTH PLANNING GRANTS

''AUTHORIZATION OF APPROPRIATIONS

[''SEC. 1511. For the purpose of carrying out this part, there are authorized to be appropriated $65,086,000 for fiscal year 1986, $69,200,000 for fiscal year 1987, and $73,800,000 for fiscal year 1988 of which not more than 10 percent for any fiscal year shall be to administer Parts B, C, and D of this title.]

''SEC. 1511. (a) For the purpose of carrying out this part, and for administrative expenses under parts C and D, there are authorized to be appropriated $65,086,000 for fiscal year 1986, $69,200,000 for fiscal year 1987, and $73,800,000 for fiscal year 1988.

''(b)(1) Not more than 10 percent of the total amount appropriated under subsection (a) for any fiscal year shall be available for such

fiscal year for the administration of this part and parts B and C and for grants and contracts under section 1522.

"(2) Of the amount available under paragraph (1) for any fiscal year, $1,000,000 shall be available for such fiscal year for grants and contracts under section 1522.

"ALLOTMENTS TO STATES

"SEC. 1512. (a)(1) From amounts appropriated under section 1511 for a fiscal [year], *year and available for allotments under this section,* the Secretary shall allot to each State [that has complied with the requirements of this part] an amount that bears the same ratio to the [total amount appropriated under such section] *available amounts* for such fiscal year as the population of the State bears to the population of all States, except as provided by paragraph (2).

"(2) Notwithstanding paragraph (1), the allotment of any State in any fiscal year under this subsection shall not be less than $237,600. If, under paragraph (1), the allotment of any State in any fiscal year will be less than $237,600, the Secretary shall increase the allotment of such State to $237,600 and shall proportionately reduce the allotments of all other States whose allotment exceeds $237,600 in a manner that will insure that the allotment of each State in such fiscal year is at least $237,600.

"(3) For purposes of this part, the population of a State shall be determined on the basis of the 1980 decennial census.

"(b) To the extent that all the funds [appropriated under section 1511 for a fiscal year and] available for allotment in [such] *any* fiscal year are not otherwise allotted to States because—

"(1) one or more States have not submitted an application [or description of activities] in accordance with section [1520] *1515* for such fiscal year;

"(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; [or]

"(3) part of the allotment of one or more States is returned to the Secretary for reallotment pursuant to section 1514(b)(3); or

[*"(3)*] *"(4)* some State allotments are offset or repaid under section [1906(b)(3);] *1906(b)(3) (as such section applies to this title pursuant to section 1515(e);*

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.

"PAYMENTS UNDER ALLOTMENTS TO STATES

"SEC. 1513. (a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotments under section 1512 from amounts appropriated for that fiscal year.

"(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

"USE OF ALLOTMENTS

"SEC. 1514. (a) Amounts paid to a State under section 1513 from its allotment under section 1512 for any fiscal year may be used at the discretion of the State for any one or more of the following:

"(1) the compilation or conduct of studies and analyses, and the collection of data, by—

"(A) a State agency; or

"(B) local public and private entities designated by the State,

with respect to the financing and delivery of health care in the State;

"(2) the development by public or private entities designated by the State of local plans for the allocation of health services and resources in the applicable locality;

"(3) the establishment of a certificate of need program in accordance with part C;

"(4) the collection and dissemination by public and private entities designated by the State of purchaser information with respect to health care services; and

"(5) assessments by public and private entities designated by the State of the access to health services by individuals residing in rural areas and by individuals who have no medical insurance or insufficient medical insurance.

[**"(b) Not less than 30 percent of amounts allotted to a State shall be granted by the State to local planning agencies. Any amount required to be, but not, so granted (including amounts not granted by reason of a waiver under section 1520(g)) shall be reallotted by the Secretary among States that are in compliance with this subsection. Such allotment shall be on the same basis as the allotment under section 1512.**]

"(b)(1) A State shall use not less than 30 percent of the total amount paid to a State for a fiscal year under section 1513 from its allotment under section 1512 for a fiscal year to make grants to local planning agencies in the State, except as otherwise provided in this subsection.

"(2) The Secretary shall grant a waiver from the provisions of paragraph (1) to any State which applies for such a waiver.

"(3)(A) Any State which does not, for any fiscal year, make grants to local planning agencies in the State in the total amount required by paragraph (1) for such fiscal year shall return to the Secretary any amount which was required pursuant to paragraph (1) to be used for such grants but which was not used for such grants.

"(B) If a State applies for and receives, pursuant to paragraph (2), a waiver from the provisions of paragraph (1), a State shall return to the Secretary any amount—

"(i) which, pursuant to paragraph (1), the State would have been required to use for grants to local planning agencies in the State if such waiver had not been granted; and

"(ii) which has not been used by the State for such grants for such fiscal year.

"(C) Amounts returned to the Secretary under this paragraph shall be reallotted in accordance with section 1512(b).

"(4) This subsection does not apply to any State for which, on September 30, 1985, an application under section 1536 (as such section was in effect on September 30, 1985) was approved and was in effect.

"APPLICATION FOR ALLOTMENT

"SEC. 1515. (a) No allotment may be made under this part to a State unless the Governor of the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall contain—

"(1) a copy of the State plan required under section 1518;

"(2) a copy of the State administrative program required under section 1519; and

"(3) a description of the State certificate of need program, if any, under part C.

"(b) The Secretary may not approve an application for an allotment under this part unless the Secretary determines that—

"(1) the State plan complies with the provisions of this title;

"(2) the State administrative program complies with the provisions of this title;

"(3) the State certificate of need program, if any, complies with the requirements of this title; and

"(4) the designated agency has sufficient authority under State law to enforce the State administrative program and the requirements of this title.

"(c) The Federal share in any fiscal year of the cost of carrying out any application under this section shall be 75 percent.

"(d) Notwithstanding subsections (a) and (b), the Secretary may make an allotment to a State under this part for fiscal year 1986 if the application of the State certifies to the Secretary that—

"(1) the State will comply with the provisions of this title (as in effect on September 30, 1985); and

"(2) the State will comply with the provisions of this title (as in effect on and after the effective date of the Health Planning and Resource Allocation Act of 1986) during fiscal year 1987, and each of the succeeding fiscal years.

"(e) Except where inconsistent with the provisions of this part, the provisions of section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909 shall apply to this part in the same manner as such provisions apply to part A of title XIX.

"GRANTS TO LOCAL PLANNING AGENCIES

"SEC. 1516. (a) A local planning agency in a State may use a grant provided to such agency with funds paid to the State under this part to—

"(1) provide information and opinions to the designated agency of such State;

"(2) assist the designated agency of such State in health planning and resource allocation; and

"(3) encourage the development of cost-effective alternatives to current health care financing and delivery systems.

"(b) The State share in any fiscal year of the cost of carrying out an application of a local planning agency for a grant from funds paid to such State under this part shall be not more than 95 percent for fiscal year 1986, 85 percent for fiscal year 1987, and 75 percent for fiscal year 1988 and each succeeding fiscal year.

"DESIGNATION OF STATE HEALTH SERVICES AND RESOURCES ALLOCATION AGENCY

[''SEC. 1515.] *"SEC. 1517.* (a) The Governor of each State shall designate a State agency as the State health services and resources allocation agency.

"(b) The designated agency shall—

"(1) develop and administer the State health services and resources allocation plan required under section [1516;] *1518;*

"(2) develop and administer the State administrative program required under section [1517;] *1519;*

"(3) administer the certificate of need [program (if any)] *program, if any,* under part C; and

"(4) prepare the annual report required under section [1519.] *1521.*

"STATE PLAN

[''SEC. 1516.] *"SEC. 1518.* The designated agency of each State shall prepare the State health services and resources allocation plan. For each of the first three fiscal years beginning after the date on which a State plan is prepared, the State plan shall contain—

"(1) a description of the health care needs of the State for services and facilities;

"(2) an inventory of the health care services and facilities located in the State; and

"(3) a comparison of the health care needs of the State identified pursuant to paragraph (1) with the services and facilities identified pursuant to paragraph (2) and a statement of how the designated agency plans to allocate such services and facilities to meet the health care needs of the State.

"STATE ADMINISTRATIVE PROGRAM

[''SEC. 11517.] *"SEC. 1519.* (a) The designated agency shall develop a State administrative program with respect to health planning and resource allocation. The program shall—

"(1) provide for the performance within the State of the functions described in section [1515(b)] *1517(b)* and specify the designated agency as the sole agency responsible for the performance of such functions and for the administration of the State program;

"(2) contain or be supported by satisfactory evidence that the designated agency has under State law the authority to carry out such functions and the State program;

"(3) contain a current budget for the operation of the designated agency;

"(4) contain provisions for a professional staff for health planning and resource allocation;

"(5) require the designated agency to perform its functions in accordance with the established procedures and criteria of that agency;

"(6) require the designated agency to comply with State administrative regulations required of other public agencies within the State;

"(7) provide for fiscal control and accounting procedures consistent with State law; and

"(8) contain provisions for a staff for the State Advisory Board established under section [1518]. *1520.*

"(b) The State administrative program shall be approved by the Governor of the State.

"STATE ADVISORY BOARDS

[''SEC. 1518.] *"SEC. 1520.* (a) The Governor of each State shall appoint a State Advisory Board to provide assistance to the designated agency with respect to health planning and resource allocation. The members of the Advisory Board shall be broadly representative of consumers of health care, including individuals and major purchasers, and of providers of health care. Two-thirds of the members of a State Advisory Board shall be major purchasers.

"(b) Each State Advisory Board shall review the State plan required under section [1516,] *1518,* and the report of the designated agency required under section [1519,] *1521,* and shall prepare and transmit to the Governor of the State a report containing its comments on such plan and annual report. The designated agency shall include the report of the Advisory Board required under this section in the report required under section [1519.] *1521.*

"(c) Each State Advisory Board shall meet at least once each year.

"ANNUAL REPORT

[''SEC. 1519.] *"SEC. 1521.* (a) By December 1 of each year, each designated agency shall prepare and transmit to the Governor of the State an annual report. The annual report shall contain—

"(1) a copy of the State plan required under section [1512;] *1518;*

"(2) a summary describing the activities of the designated agency in carrying out the certificate of need [program (if any)] *program, if any,* under part C;

"(3) a summary statement, for each major type of provider of health care, of—

"(A) total revenues obtained in the preceding fiscal year;

"(B) per capita expenditures of each such type of provider during the preceding fiscal year;

"(C) changes in prices charged for health care services and changes in the volume of use of health care services during the preceding fiscal year; and

"(D) the rate of increase or decrease in per capita expenditures by each such provider during the preceding fiscal year; and

"(4) the report of the State Advisory Board required under section [1518.] *1520.*

"(b) By January 1 of each year, the Governor of each State shall transmit to the Secretary the annual report prepared by the designated agency under subsection (a), and the comments of the Governor on such report. The Governor shall publish and make the report, including such comments, available to the public.

["APPLICATION FOR GRANT

["SEC. 1520. (a) No grant may be made under this section to a State unless the Governor of the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall contain—

["(1) a copy of the State plan required under section 1516;

"(2) a copy of the State administrative program required under section 1517; and

["(3) a description of the State certificate of need program (if any) under part C.

["(b) The Secretary may not approve an application for a grant under this section unless the Secretary determines that—

["(1) the State plan complies with the provisions of this title;

["(2) the State administrative program complies with the provisions of this title;

["(3) the State certificate of need program (if any) complies with the requirements of this title; and

["(4) the designated agency has sufficient authority under State law to enforce the State administrative program and the requirements of this title.

["(c) In addition to the purpose described in subsection (a), amounts provided to a State under this section shall be used by the Governor of each State to make grants to local planning agencies in the State. The purpose of such grants shall be to provide support to enable local planning agencies to provide information and opinions to the designated agency to assist the designated agency in carrying out part B.

["(d) The Federal share in any fiscal year of the cost of carrying out any application under this section shall be 75 percent.

["(e) Any State's allotment under subsection (b) for a fiscal year which the Secretary determines will not be required, for the period that such allotment is available, because—

["(1) the State did not apply for such allotment; or

["(2) the Secretary determined that the State was ineligible for a grant under this section from such allotment,

shall be available for reallotment from time to time, or such dates during such period as the Secretary shall determine, to other States in proportion to the original allotments to such States under subsection (b) for such fiscal year. Any amount allotted to a State under this subsection during a fiscal year shall be deemed a part of its allotment under subsection (b) for such fiscal year.

["(f) Notwithstanding subsections (c) and (d), the Secretary may make a grant to a State under this section for fiscal year 1986, if the application of the State certifies to the Secretary that—

[“(1) the State will comply with the provisions of this title (as in effect on September 30, 1985); and

[“(2) the State will comply with the provisions of this title (as in effect on and after October 1, 1985) during fiscal year 1987, and each of the succeeding fiscal years.

[“(g) The Secretary shall grant any State that applies a waiver from the requirements of subsection (c).

[“USE OF GRANT BY LOCAL PLANNING AGENCY

[“SEC. 1521. (a) A local planning agency in a State may use a grant provided under this part to—

[“(1) assist the designated agency of such State in health planning and resource allocation; and

[“(2) encourage the development of cost-effective alternatives to current health care financing and delivery systems.

[“(b) The Federal share in any fiscal year of the cost of carrying out an application of a local planning agency under section 1520(c) shall be not more than 95 percent for fiscal year 1986, 85 percent for fiscal year 1987, and 75 percent for fiscal year 1988 and each succeeding fiscal year.

“CENTERS FOR HEALTH PLANNING

“SEC. 1522. (a) For the purposes of assisting the Secretary in carrying out this title, providing such technical and consulting assistance as designated agencies may from time to time require, conducting research, studies and analyses of health planning and resources development, and developing health planning approaches, methodologies, policies, and standards, the Secretary shall by grants or contracts, or both, assist public or private nonprofit entities in meeting the costs of operating two centers for multidisciplinary health planning development and assistance. To the extent practicable, the Secretary shall provide assistance under this section to support centers which were in existence on September 30, 1985.

“(b)(1) No grant or contract may be made under this section for operation of a center unless the Secretary determines that the center meets the requirements of paragraph (2) and is able to provide assistance and dissemination of information to designated agencies as provided in subsections (a) and (c).

“(2) The requirements referred to in paragraph (1) are as follows:

“(A) There shall be a full-time director of the center who possesses a demonstrated capacity for substantial accomplishment and leadership in the field of health planning and resources development, and there shall be such additional professional staff as may be appropriate.

“(B) The staff of the center shall represent a diversity of relevant disciplines.

“(C) Such additional requirements as the Secretary may by regulation prescribe.

“(c) Centers assisted under this section (1) may enter into arrangements with designated agencies for the provision of such services as may be appropriate and necessary in assisting such agencies in performing their functions under this title, and (2) shall develop

and use methods (satisfactory to the Secretary) to disseminate to such agencies planning approaches, methodologies (including methodologies to provide for education of new board members and new staff and continuing education of board members and staff of such agencies), policies, and standards.

[''(d) For the purpose of making payments pursuant to grants and contracts under subsection (a), from the sums appropriated to carry out this title in any fiscal year, $1,000,000 shall be available.

[''(e)] *''(d)* Each center shall be located in the geographical half of the continental United States that it will serve.

''PART C—CERTIFICATE OF NEED PROGRAM

''SEC. 1530. (a) If a State establishes a certificate of need program, the program shall, in accordance with this section, provide for the following:

''(1) Review and determination of need under such program for—

''(A) major medical equipment and institutional health services, and

''(B) capital expenditures,

shall be made before the time such equipment is acquired, such services are offered, substantial expenditures are undertaken in preparation for such offering, or capital expenditures are obligated.

''(2) The acquisition and offering of only such equipment and services as may be found by the designated agency to be needed; and the obligation of only those capital expenditures found to be needed by the designated agency. Except as otherwise authorized by this section, review under the program of an application for a certificate of need may not be made subject to any criterion and the issuance of a certificate of need may not be made subject to any condition unless the criterion or condition directly relates to—

''(A) criteria prescribed by section 1531(c),

''(B) criteria prescribed by regulations of the Secretary promulgated under section 1532(a) (as such section was in effect before the date of enactment of the Health Planning and Resource Allocation Act of 1985), or

''(C) criteria prescribed by regulation by the designated agency in accordance with an authorization prescribed by State law.

The Secretary may not require a State to include in its program any criterion in addition to criteria described in subparagraphs (A) and (B).

''(3) An application for a certificate of need for an institutional health service, medical equipment, or a capital expenditure shall specify the time the applicant will require to make such service or equipment available or to obligate such expenditure and a timetable for making such service or equipment available or obligating such expenditure. After the issuance of a certificate of need, the designated agency shall periodically review the progress of the holder of the certificate in meeting the timetable specified in the approved application for the cer-

tificate. If on the basis of such a review, the designated agency determines that the holder of a certificate is not meeting such timetable and is not making a good faith effort to meet it, the designated agency may withdraw the certificate.

"(4) In issuing a certificate of need, the State shall specify in the certificate the maximum amount of capital expenditures which may be obligated under such certificate. The program shall, in accordance with regulations promulgated by the Secretary, prescribe the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceed the maximum specified in the certificate of need.

"(5) The program shall provide that (A) the requirements of section 1531 shall apply to proceedings under the program, and (B) each decision to issue a certificate of need (i) may only be issued by the designated agency, and (ii) shall, except in emergency circumstances that pose a threat to public health, be consistent with the State plan in effect for such State under section [1516.] *1518.*

"(b)(1) Under the program a State shall not require a certificate of need for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provision of an inpatient institutional health service by—

"(A) a health maintenance organization or a combination of health maintenance organizations if (i) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (ii) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination;

"(B) a health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (iv) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination; or

"(C) a health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations and on the date the application is submitted under paragraph (2) at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (iii) at least 75 percent of the patients

who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization,

if, with respect to such offering, acquisition, or obligation, the designated agency has, upon application under paragraph (2), granted an exemption from such requirement to the organization, combination of organizations, or facility.

"(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under paragraph (1) from obtaining a certificate of need before offering an institutional health service, acquiring major medical equipment, or obligating capital expenditures unless—

"(A) it has submitted, at such time and in such form and manner as the designated agency shall prescribe, an application for such exemption,

"(B) the application contains such information respecting the organization, combination, or facility and the proposed offering, acquisition, or obligation as the designated agency may require to determine if the organization or combination meets the requirements of paragraph (1) or the facility meets or will meet such requirements, and

"(C) the designated agency approves such application.

In the case of a proposed health care facility (or portion thereof) which has not begun to provide institutional health services on the date an application is submitted under this paragraph with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of paragraph (1) when the facility first provides such services. The designated agency shall approve an application submitted under this paragraph if it determines that the applicable requirements of paragraph (1) are met.

"(3) Notwithstanding subsection (d), a health care facility (or any part thereof) or medical equipment with respect to which an exemption was granted under paragraph (1) may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired and a health care facility described in subparagraph (C) of paragraph (1) which was granted an exemption under such paragraph may not be used by any person other than the lessee described in such subparagraph unless—

"(A) the designated agency issues a certificate of need approving the sale, lease, acquisition, or use, or

"(B) the designated agency determines, upon application, that the entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling interest in or use the facility is (i) a health maintenance organization or a combination of health maintenance organizations which meets the requirements of clause (i) of subparagraph (A) of paragraph (1) and with respect to such facility or equipment, the entity meets the requirements of clause (ii) of such subparagraph, or (ii) a health care facility which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (B) of paragraph (1) and with respect to its patients meets the requirements of clause (iv) of such subparagraph.

"(4) In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, a State may under the program apply its certificate of need requirements only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services and then only to the extent that such offering, acquisition, or obligation is not exempt under paragraph (1).

"(5) Notwithstanding section 1531(c), if a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization applies for a certificate of need, such application shall be approved by the designated agency if the designated agency finds (in accordance with criteria prescribed by the Secretary by regulation) that—

"(A) approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll, and

"(B) the health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

Except as provided in paragraph (1) and notwithstanding subsection (d), a health care facility (or any part thereof) or medical equipment with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired unless the designated agency issues a certificate of need approving the sale, acquisition, or lease.

"(c) An application for a certificate of need for a capital expenditure which is required—

"(1) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations,

"(2) to comply with State licensure standards, or

"(3) to comply with accreditation standards compliance with which is required to receive reimbursements under title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under title XIX of such Act,

shall be approved unless the designated agency finds that the facility or service with respect to which such capital expenditure is proposed to be made is not needed or that the obligation of such capital expenditure is not consistent with the State plan in effect under section [1516.] *1518.* An application for a certificate of need approved under this subsection shall be approved only to the extent that the capital expenditure is required to eliminate or pre-

vent the hazards described in paragraph (1) or to comply with the standards described in paragraph (2) or (3).

"(d)(1) Under the program a certificate of need shall, except as provided in subsection (b), be required for the obligation of a capital expenditure to acquire (either by purchase or under lease or comparable arrangement) an existing health care facility if—

"(A) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

"(B) the designated agency finds, within thirty days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the services or bed capacity of the facility will be changed in being acquired.

"(2) Before any person enters into a contractual arrangement to acquire an existing health care facility which arrangement will require the obligation of a capital expenditure, such person shall notify the designated agency of the State in which such facility is located of such person's intent to acquire such facility and of the services to be offered in the facility and its bed capacity. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the facility with respect to which the notice is given.

"(e)(1)(A) Except as provided in subsection (b) and subparagraph (B), under the program a certificate of need shall not be required for the acquisition of major medical equipment which will not be owned by or located in a health care facility unless—

"(i) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

"(ii) the designated agency finds, within thirty days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the equipment will be used to provide services for inpatients of a hospital.

"(B) The certificate of need program of a State may include a requirement for a certificate of need for an acquisition of major medical equipment. Such requirement may be in addition to the requirement for a certificate of need established by subparagraph (A).

"(2) Before any person enters into a contractual arrangement to acquire major medical equipment which will not be owned by or located in a health care facility, such person shall notify the designated agency of the State in which such equipment will be located of such person's intent to acquire such equipment and of the use that will be made of the equipment. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the equipment with respect to which the notice is given.

"(3) For purposes of this subsection, donations and leases of major medical equipment shall be considered acquisitions of such equipment, and an acquisition of medical equipment through a transfer of such equipment for less than fair market value shall be considered an acquisition of major medical equipment if the fair market value of such equipment is at least the expenditure minimum established under section [1502(10)] *1501(9)*.

"(f) Notwithstanding section 1531(c), when an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The designated agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

"(g)(1) Subsection (a) does not require a certificate of need program to require a health care facility to obtain a certificate of need for the acquisition of major medical equipment to be used solely for research, institutional health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research if the acquisition, offering, or obligation does not—

"(A) affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

"(B) substantially change the bed capacity of the facility; or

"(C) substantially change the medical or other patient care services of the facility which were offered before the acquisition, offering, or obligation.

"(2)(A) Before a health care facility acquires major medical equipment to be used solely for research, offers an institutional health service solely for research, or obligates a capital expenditure solely for research, such health care facility shall notify in writing the designated agency of the State in which such facility is located of such facility's intent and the use to be made of such medical equipment, institutional health service, or capital expenditure.

"(B) Paragraph (1) does not apply with respect to the acquisition of major medical equipment, the offering of institutional health services, or the obligation of a capital expenditure if—

"(i) the notice required by subparagraph (A) is not filed with the designated agency with respect to such acquisition, offering, or obligation, or

"(ii) the designated agency finds, within sixty days after the date it receives a notice in accordance with subparagraph (A) respecting the acquisition, offering, or obligation, that the acquisition, offering, or obligation will have the effect or make a change described in subparagraph (A), (B), or (C) of paragraph (1).

"(3) If major medical equipment is acquired, an institutional health service is offered, or a capital expenditure is obligated and a certificate of need is not required for such acquisition, offering, or obligation as provided in paragraph (1), such equipment or service or equipment or facilities acquired through the obligation of such capital expenditure may not be used in such a manner as to have the effect or to make a change described in subparagraph (A), (B), or (C) of paragraph (1) unless the designated agency issues a certificate of need approving such use.

"(4) For purposes of this subsection, the term 'solely for research' includes patient care provided on an occasional and irregular basis and not as part of a research program.

"PROCEDURES AND CRITERIA FOR REVIEW OF CERTIFICATE OF NEED DETERMINATIONS

"SEC. 1531. (a) In conducting any review of an application for a certificate of need or an exemption therefrom under section 1530, or in making any other determination under such section, the designated agency must follow procedures and apply criteria, developed and published by the designated agency in accordance with regulations of the Secretary.

"(b) Each designated agency shall include in the procedures required by subsection (a) at least the following:

"(1) Timely written notification to affected persons of the beginning of a review of an application for a certificate of need or an exemption therefrom under section 1530, or of a review of compliance with such a certificate.

"(2)(A) The establishment of a time period for the approval or disapproval by the designated agency of applications for certificates of need and exemptions therefrom under section 1530. The time period established pursuant to this subparagraph may vary with the type of project for which an application is being made, as specified by the designated agency pursuant to regulation, but may not exceed one hundred and twenty days.

"(B) Provisions that an application for a certificate of need or an exemption therefrom under section 1530 shall be considered to have been approved if the designated agency has not made a decision with respect to such application by the end of the one hundred and twenty day period referred to in subparagraph (A).

"(3)(A) Provisions for persons subject to a review to submit to the designated agency (in such form or manner as the designated agency shall by regulation require) such information as the designated agency may require concerning the subject of such review. Each designated agency shall develop procedures to assure that requests for information in connection with a review under this part are limited to only that information which is necessary for the designated agency to perform the review.

"(B) The establishment of an additional time period for the submission under subparagraph (A) of additional information with respect to an application for a certificate of need or an exemption therefrom under section 1530, which shall be at least fifteen calendar days. Such additional time period shall not be included in the one hundred and twenty day period described in paragraph (2)(A).

"(4) Submission of periodic reports by providers of health services and other persons subject to review by the designated agency respecting the development of proposals subject to review.

"(5) Provisions for written findings which state the basis for any final decision or recommendation made by the designated agency.

"(6) Timely notification of providers of health services and other persons subject to review by the designated agency of the health services or proposals subject to review, findings made in the course of such review, and other appropriate information respecting such review.

"(7) Provisions for public hearings in the course of review by the designated agency if requested by persons directly affected by the review; and provisions for public hearings, for good cause shown, respecting designated agency decisions.

"(8) Access by the general public to all applications reviewed by the designated agency and to all other written materials essential to any designated agency.

"(9) In the case of construction projects, submission to the designated agency by the entities proposing the projects of letters of intent in such details as may be necessary to inform the designated agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

"(10) Provisions requiring that hearings will be held before the designated agency in which—

"(A) any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing;

"(B) any person directly affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matter; and

"(C) a record of the hearing shall be maintained.

"(11) Provisions requiring that—

"(A) any decision of a designated agency to issue or to not issue a certificate of need or to withdraw a certificate of need shall be based solely (i) on the review of the designated agency conducted in accordance with procedures and criteria the designated agency has adopted in accordance with this section and regulations promulgated under this section, and (ii) on the record established in administrative proceedings held with respect to the application for such certificate or the designated agency's proposal to withdraw the certificate, as the case may be; and

"(B) any decision of a designated agency to approve or disapprove an application for an exemption under section 1530(b) shall be based solely on the record established in the administrative proceedings held with respect to the application.

"(12) Provisions requiring that—

"(A) each decision of the designated agency with respect to a certificate of need or an application for an exemption under section 1530(b) shall, upon request of any person directly affected by such decision, be reviewed with respect to procedural matters under an appeals mechanism con-

sistent with State law governing the practices and procedures of administrative agencies or, if there is no such State law, by an entity (other than the designated agency) designated by the Governor; and

"(B) no decision of the designated agency with respect to a certificate of need or an application for an exemption under section 1530(b) shall be subject to de novo administrative review.

"(13) Provisions permitting any person adversely affected by a final decision of a designated agency with respect to a certificate of need or an application for an exemption under section 1530(b) to, within a reasonable period of time after such decision is made (and any administrative review of such decision is completed), obtain judicial review of such decision in an appropriate State court. The decision of the designated agency shall be affirmed upon such judicial review unless it is found to be arbitrary or capricious or not made in compliance with applicable law.

"(14) Provisions requiring that there shall be no ex parte contacts—

"(A) in the case of an application for a certificate of need, between the applicant for the certificate of need, any person acting on behalf of the applicant, or any person opposed to the issuance of a certificate for the applicant and any person in the designated agency who exercises any responsibility respecting the application after the commencement of a hearing on the applicant's application and before a decision is made with respect to such application; and

"(B) in the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal and any person in the designated agency who exercises responsibility respecting withdrawal of the certificate after commencement of a hearing on the designated agency's proposal to withdraw the certificate of need and before a decision is made on withdrawal.

"(c) Criteria required by subsection (a) for designated agency review shall include consideration of at least the following:

"(1) The relationship of the health services being reviewed to the State plan.

"(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

"(3) The need that the population served or to be served by such services has for such services.

"(4) The availability of alternative, less costly, or more effective methods of providing such services.

"(5) The relationship of services reviewed to the existing health care system of the area in which such services are provided or proposed to be provided.

"(6) In the case of health services proposed to be provided—

"(A) the availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of such services;

"(B) the effect of the means proposed for the delivery of such services on the clinical needs of health professional training programs in the area in which such services are to be provided;

"(C) if such services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes;

"(D) the availability of alternative uses of such resources for the provision of other health services; and

"(E) the extent to which such proposed services will be accessible to all the residents of the area to be served by such services.

"(7) The special needs and circumstances of health maintenance organizations.

"(8) In the case of a construction project—

"(A) the costs and methods of the proposed construction, including the costs and methods of energy provision; and

"(B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project and on the costs and charges to the public of providing health services by other persons.

"(9) The special circumstances of health service institutions and the need for conserving energy.

"(10) The factors which affect the effect of competition on the supply of the health services being reviewed.

"(11) Improvements or innovations in the financing and delivery of health services which foster competition, and serve to promote quality assurance and cost-effectiveness.

"(12) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

"(13) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past.

"PART D—OTHER FEDERAL RESPONSIBILITIES

"NATIONAL HEALTH PLANNING AND RESOURCE CONTROL COUNCIL

"SEC. 1541. (a) There is established a National Health Planning and Resource Control Council. The National Council shall—

"(1) review and analyze the annual reports received by the Secretary from States under section [1518;] *1521;*

"(2) provide the Secretary with advice and assistance with respect to the report of the Secretary to the Congress required under section 1542; and

"(3) make recommendations to the Secretary with respect to health care planning and resource allocation in order to assist the Secretary in carrying out the purposes of this title.

"(b) The National Council shall consist of fifteen members appointed by the Secretary as follows:

"(1) A majority of the members shall be representatives of major purchasers.

"(2) Two members shall be the heads of designated agencies.

"(3) Two members shall be representatives of providers of health care.

"(4) One member shall be an individual consumer of health care.

"(c) The Chairman of the National Council shall be elected by the members of the National Council from among the members who are representatives of major purchasers.

"(d) The term of office of a member of the National Council shall be four years, except that the Secretary shall divide the initial appointments to the National Council into three groups of five members each for initial terms of one, two, and three years.

"(e) At least eight members of the National Council shall constitute a quorum, but a lesser number may hold hearings. A vacancy in the National Council shall not affect its authority.

"(f) Each member of the National Council shall receive compensation at a rate equal to the daily rate prescribed for level 6 of the Senior Executive Schedule established under section 5382 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties as a member of the National Council, and shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties as a member of the National Council.

"ANNUAL REPORT

"SEC. 1542. By March 1 of each year, the Secretary shall prepare and transmit to the Congress a report with respect to activities conducted under this title during the preceding fiscal year. The report shall contain—

"(1) a summary of the activities of the States with respect to health planning, resource allocation, and cost containment;

"(2)(A) a comparison of the cost of health care in each State with the cost of health care in all other States;

"(B) a comparison of the cost of health care provided by each type of provider of health care in a State with the cost of health care by each such type of provider in all other States;

"(C) a comparison of the costs referred to in subparagraphs (A) and (B) among States receiving [grants under section 1521] *payments under part B* and States not receiving any [grant] *payments* under this title;

"(3) a specification, for the Nation and for each State, of—

"(A) total revenues obtained from health care services;

"(B) the per capita cost of health care services and the rate of increase of such costs from the preceding fiscal year; and

"(C) a comparison of the change in the per capita cost of health care services during the preceding fiscal year to the volume of services provided during such year, and a comparison of the change in such per capita cost to the price of services provided during such year; and

"(4) a description of the changes in the supply of health care resources during the preceding fiscal year.".

(b) Section 2(f) of such Act is amended by striking out [**"1531(1),"** and inserting in lieu thereof "1502(1),".] *"1531(1),".*

(c) The amendments made by this section shall take effect on 120 days after the date of enactment *of this Act,* except that the Secretary may issue regulations *to carry out title XV of the Public Health Service Act (as amended by subsection (a) of this section)* any time after the date of [enactment.] *enactment of this Act.*

[(d) A State or territory that received federal financial assistance under this title by reason, or under the terms, of section 1536 (as in effect on the day prior to the date upon which the Health Planning and Resource Allocation Act of 1985 was enacted), shall continued to be considered a State for purposes of this title.]

[(e)] *(d)* Notwithstanding any other provision of this title, no State and no local planning agency shall receive a grant in a amount less than it received in fiscal year 1985 under title XV (as then in effect) nor shall any reallotment reduce any such grants below that amount. If the total amounts available for grants to States and local planning agencies are insufficient to carry out the provisions of the previous sentence, each grant to such State and local planning agency shall be reduced proportionately.

V. Committee Views

The Committee supports legislation revising title XV of the Public Health Service Act to provide States with health planning funds. The legislation authorizes $65,000,000 for fiscal year 1986, $69,200,000 for fiscal year 1987, and $73,800,000 for fiscal year 1988. In addition, the Committee statutorily supports limiting the funds to 10 percent which can be spent at the federal level in administering this program.

These funds will be divided among the states based on a population formula. A minimum grant to each state would equal $237,000 which equals the current minimum allotment provided to each state agency.

The bill requires that the States use their allotments to undertake one or more of the following activities: data collection and research concerning the financing and delivery of health care; the development of local health plans for the allocation of health services and resources; the collection and dissemination of purchaser information with respect to health care services; assessments of access to health care services for individuals living in rural areas and for those who have none or insufficient medical insurance; and for certificate of need programs. However, those states that choose to use these funds for Certificate of Need reviews will be required to establish this program in accord with a number of requirements outlined in this bill.

The Committee believes that permitting the States to use their own discretion in determining which activities it chooses to undertake will allow each state to design a health planning program to meet its own special needs.

The Committee wishes to highlight its intention to give states the prerogative to use the funds to meet two pressing needs of the

competitive health care system which have repeatedly come to the Committee's attention—the assessments of access to health care services for rural and indigent or insufficiently insured populations; and the collecton and dissemination of purchaser information with respect to health care services.

As price competition has begun to dominate the financing of the health care delivery system, indirect subsidies that have existed within the system for years as a way of paying uncompensated costs have tended to be squeezed out of the system. In addition, the problems of access to health care services, particularly tertiary care, in the rural areas is of deep concern as the competitive marketplace moves forward. Thus, the Committee believes that it is important that the States utilize health planning funds to evaluate the magnitude of their access to care problems and to decide how to appropriately address them.

The Committee also believes that adequate purchaser information about the cost and quality of health care services is necessary in a competitive marketplace. To foster competition in the health care marketplace, purchasers need access to easily understood and relevant cost and quality data. The Committee recognizes the many problems that exist in developing this information but believes that responsible efforts are needed in this direction.

LOCAL HEALTH PLANNING PROGRAMS

The Committee bill provides for authorization and continued funding of local health planning agencies in those states that choose to have local planning. In recognition of the changes that have taken place in community health planning over the past few years, the bill provides new and needed organizational flexibility and includes major purchasers of care in the governance of these agencies.

In maintaining support for local health planning agencies, the Committee notes the community focus these organizations can and do provide. Their on-site analysis of the effects of rapid changes taking place in the health care system is an invaluable resource to local, state and federal governments, as well as to purchasers, consumers, and providers of care.

The bill also provides for the preservation of existing agencies so that their valuable expertise is not lost in the areas they now serve.

STATE PLAN, STATE ADMINISTRATIVE PROGRAM, STATE ADVISORY BOARDS ANNUAL REPORTS

States will be required to undertake a limited number of activities in order to be eligible to receive Federal health planning funds. Each State will be required to:

(1) Designate a State agency as the State health services and resource allocation agency. This agency will be responsible for: developing and administering the State health services and resources allocation plan and the state administrative program; administering the State certificate of need program if the State establishes one; and preparing the State annual report.

(2) Prepare a State health services and resources allocation plan which will include:

(i) A description of the health care needs of the State for services and facilities;

(ii) An inventory of the health care services and facilities located in the State; and

(iii) A comparison of the needs of the State with the State's services and facilities and a statement of how the designated agency plans to allocate such services and facilities to meet the health care needs of the State.

(3) Develop a State administrative program with respect to health planning and resource allocation. This program will be developed by the designated health services and resource allocation agency and will provide for the performance of the functions of the agency. This program must be approved by the Governor of the State.

(4) Appoint a State Advisory Board to provide assistance to the designated agency with respect to health planning and resource allocation. The Board will be responsible for reviewing the State plan and the report of the designated agency and for preparing and transmitting a report to the Governor containing its comments on the plan and the report. Two thirds of the members of the Board must be major purchasers of health care services.

In addition, each state agency is required to prepare an annual report and transmit it to the Governor of the State. Such report shall contain: 1) a copy of the State health plan; 2) a summary of the activities, if any, regarding certificate-of-need review; 3) a summary statement for each major type of provider of health care including their total revenues, per capita expenditures, changes in prices and utilization of health care services and the changes in expenditures from the preceding fiscal year. The Committee does not view this amount of data collection as burdensome, but represents a minimum level of information needed to assess state needs with regard to health care delivery.

CENTERS FOR HEALTH PLANNING

The Committee bill authorizes two centers for health planning to provide private sector technical assistance to state and local planning agencies. The Committee notes that the new health planning system will continue to need competent, responsive technical assistance. Support for two centers for health planning will provide a nationwide network for sharing planning and cost containment techniques.

CERTIFICATE OF NEED

The Committee bill, in Part C, outlines the new certificate of need requirements for those states that elect to conduct such reviews. Forty-four states currently operate CON or other capital expenditure review programs.

The new requirements substantially reduce the burden that state certificate of need programs place on applicants by allowing much higher thresholds for state review of projects. As a result, up to 75

percent of the hospital and nursing home projects which were subject to review in 1980 could be exempt from state review.

It is the Committee's view that the added flexibility of the new requirements will allow those states that choose to regulate capital expansion the ability to streamline their programs. New provisions requiring timely reviews of applications will ensure applicants are not subject to unnecessary bureaucratic delays.

The Committee bill provides a series of criteria to be applied by state planning agencies in making certificate of need decisions. These criteria are in keeping with the national interest both to avoid unnecessary duplication of services and to encourage the development of services and facilities in areas lacking them.

In order to promote competition, the bill requires that HMOs must be exempt from CON review under certain conditions.

The procedures for reviews contained in the bill provide for the minimum procedural safeguards necessary to ensure applicants of fair and timely regulatory decisions.

NATIONAL HEALTH PLANNING AND RESOURCES CONTROL COUNCIL

The bill establishes a National Health Planning and Resource Control Council which will be responsible for:

(i) Reviewing and analyzing the annual reports of the State advisory boards;

(ii) Providing the Secretary with advice and assistance with respect to the annual report of the Secretary to the Congress; and

(iii) Making recommendations to the Secretary with respect to health care planning and resource allocation in order to assist the Secretary in carrying out the purpose of this title.

The Council will be composed of fifteen members appointed by the Secretary as follows: a majority of the members shall be representatives of major purchasers; two members shall be heads of designated agencies; two members shall be representatives of providers of health care; and one member shall be an individual consumer of health care.

FEDERAL ANNUAL REPORT

By March 1 of each year, the Secretary of Health and Human Services is required to submit a report to Congress, in particular the Senate Committee on Labor and Human Resources and the House Committee on Energy and Commerce which have primary jurisdiction over federal health planning and capital expenditure laws. This report shall include state health planning activities; a comparison of the cost of health care and the providers of health care in each state as well as national data on health care revenues, per capita costs and volume of health care services. This report will provide Congress with an assessment of health care services on a national scale.

VI. Votes in Committee

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, the following is a tabulation of votes in committee.

The Committee on Labor and Human Resources voted, without objection, to favorably report S. 1855 with technical corrections.

VII. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 21, 1985.

Hon. Orrin G. Hatch,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1855, the Health Planning and Resource Allocation Act of 1985, as ordered reported by the Senate Committtee on Labor and Human Resources on November 19, 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Rudolph G. Penner.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1855.
2. Bill title: Health Planning and Resource Allocation Act of 1985.
3. Bill status: As ordered reported by the Senate Committee on Labor and Human Resources on November 19, 1985.
4. Bill purpose: To revise the provisions of the Public Health Service Act relating to health planning.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated authorization level	65.1	69.2	73.8	.....	.....
Estimated outlays	36.8	59.2	69.3	31.3	9.3

The costs of this bill would fall within budget function 550.

Basis of estimate: The authorization level for health planning grants is stated in the bill. We assume authorized amounts are fully appropriated at the beginning of each fiscal year. Outlays have been estimated using spendout rates computed by CBO for similar health planning activities within the Public Health Service.

This bill would create a new health planning system. Under the new system, grants would be given to states for health planning purposes. Under the bill, local health planning agencies would be required and a state would have to grant at least 30 percent of its allotment to such agencies. However, a state may apply for a waiver to eliminate its local agencies. In this case, 30 percent of the state's allotment would be reallocated to states with local health planning agencies. The bill would make the certificate of need pro-

gram (CON) voluntary and would change CON thresholds and procedures. Of the funds subsequently appropriated for health planning grants, $1 million would be used to fund the activities of the Centers for Health Planning. The bill would also establish a National Health Planning and Resource Control Council. This council would also be funded from subsequent appropriations for health planning grants.

6. Estimated cost to State and local government: The grants to state planning agencies may not exceed 75 percent of the agencies operating costs. At least 25 percent of agency funding must come from non-federal sources which could be provided by state and local governments. If local planning agencies are established an increasing proportion of funding would have to come from non-federal sources.

7. Estimate comparison: CBO prepared an estimate on November 6, 1985 for H.R. 3010, the Health Planning Amendments of 1985 as ordered reported by the House Committee on Energy and Commerce. The House bill would reauthorize the current health planning program for fiscal year 1986 and repeal all health planning programs in fiscal year 1987.

8. Previous CBO estimate: None.

9. Estimate prepared by: Carmela Dyer.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

VIII. Regulatory Impact Statement

The Committee has determined that there will be a reduction in current regulatory burden or paperwork imposed by the bill.

IX. Section-by-Section Analysis

REFERENCE

Section 1 cites the title of the bill as the "Health Planning and Resource Allocation Act of 1986."

PURPOSE

Section 2 states that the purpose of this bill is to permit States to have flexibility in health planning activities so that competition in the provision of health care services is promoted.

DEFINITIONS

Section 3(a) amends title XV of the Public Health Service Act (PHS) to provide a new title XV as follows:

NEW PART A—DEFINITIONS

New section 1501(1) defines the term "Governor" to mean the chief executive officer of a State or the designee of such chief executive officer.

New section 1501(2) defines the term "State health services and resources allocation agency" or "designated agency" to mean the State agency which is designated by the Governor of a State to develop the State plan required under new section 1518 and which is

responsible for the administration of the State certificate of need program, if any, under new part C.

New section 1501(3) defines the term "local planning agency" to mean an entity whose primary purpose is health planning and resource allocation; which is controlled by a governing body whose majority is made up of consumers and major purchasers; and which is a nonprofit private corporation not controlled by any other legal entity and which engages in health planning functions for a defined geographic area, or a public regional planning body or single unit of general local government authorized by State or local law to carry out health planning functions for a defined geographic area.

New section 1501(4) defines the term "State health services and resources allocation plan" or "State plan" to mean a plan submitted by the designated agency and approved by the Governor of the State in accordance with new section 1518.

New section 1501(5) defines the term "State administrative program" or State program" to mean the State administrative program required under new section 1519.

New section 1501(6) defines the term "health care facility" to mean a private or public hospital, rehabilitation facility, nursing home, or any other health care facility that the Governor of a State may designate by regulation. Such term does not include, however, Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

New section 1501(7) defines the term "institutional health services" to mean health services which are provided through health care facilities and entail annual operating costs of at least the expenditure minimum. The term "expenditure minimum" is defined to mean $310,000 for the twelve-month period beginning on October 1, 1985. For each twelve-month period thereafter, $310,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index designated by the Secretary.

New Section 1501(8) defines the term "capital expenditure" to mean an expenditure made by or on behalf of a health care facility; (B) which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or is made to obtain by lease or comparable arrangement any facility or part of a facility or any equipment for a facility or part of a facility; and (C) which exceeds the expenditure minimum, substantially changes the bed capacity of the facility, or substantially changes the services of the facility. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment would be included in determining if a capital expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility, which if acquired directly by such facility would be subject to review under new (C) (certificate of need program), would be considered capital expenditures. Also, a transfer of equipment of facilities for less than fair market value would be considered a capital expediture if a transfer of the equipment or facilities at fair market value

would be subject to review under a certificate of need program. The term "expenditure minimum" is defined to mean $1,000,000 for the twelve-month period thereafter, $1,000,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjustment to reflect the change in the preceding twelve-month period in an index designated by the Secretary.

New Section 1501(9) defines the term "major medical equipment" to mean medical equipment used for the provision of medical and other health services, which costs in excess of the expenditure minimum. Such term would not include, however, medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory (A) is independent of a physician's office and a hospital and (B) has been determined by the Medicare program to meet the requirements of paragraphs (11) and (12) of section 1861(s) of the Social Security Act. In determining whether medical equipment has a value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment would be included. The term "expenditure minimum" is defined to mean $400,000 for the twelve-month period thereafter, $400,000, or, at the discretion of the state, the figure in effect for the preceding twelve-month period in an index designated by the Secretary.

New Section 1501(10) defines the term "health maintenance organization" to mean a public or private organization, organized under the laws of any State, which (A) is a qualified health maintenance organization under section 1310(d) of the Public Health Service Act; or (B) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out of area coverage; is compensated (except for copayments) for the provision of the basic health care services listed above to enrolled participants by a periodic payment which is paid without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and provides physicians' services primarily directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

New Section 1501(11) defines the term "rehabilitation facility" to mean an inpatient facility which is operated primarily to assist in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

New Section 1501(12) the term "National Council" to mean the National Health Planning and Resource Control established under section 1541.

NEW PART B—HEALTH PLANNING GRANTS

Authorization of appropriations

New Section 1511 provides for authorization of appropriations for health planning grants of $65.086 million in fiscal year 1986, $69.2

million in fiscal year 1987, and $73.8 million in fiscal year 1988. No more than 10 percent of these amounts could be used to administer the health planning program at the federal level. $1 million of the appropriations must be available for grants and contracts under section 1522.

Allotments to States

New section 1512(a) requires the Secretary of Health and Human Services (HHS) to allot to each state from the amounts appropriated under new section 1511, an amount which bears the same ratio to the available amounts for such fiscal year as the state's population bears to the population of all the states, with the following exception. The bill requires that the minimum allotment to any state would be $237,600; the allotment to all other states would be proportionately reduced to insure that each state receives the minimum allotment. The bill requires that the population of a state would be determined on the basis of the 1980 decennial census.

New section 1512(b) provides that if all the funds appropriated for health planning grants are not allotted to states or to local health planning agencies pursuant to section 1514(b)(3) for the reasons specified below, the excess funds would be allotted to each of the remaining states or local health planning agency in that fiscal year. The bill provides that the reasons for not allotting all the funds to the states would be that one or more states have not submitted an application as required in new section 1515 of the bill, one or more States have notified the Secretary that they do not intend to use their full allotment, or some State allotments are offset or repaid because the amounts were found not to have been expended according to the requirements of section 1906(b)(3) of the PHS Act or if the State does not intend to use 30 percent of its money to fund local health planning agencies the 30 percent will be redistributed unless otherwise provided in section 1514(b)(3).

Payments under allotments to States

New section 1513 requires the Secretary to make payments to each State from its allotment from the amounts appropriated for the health planning program for that fiscal year, as provided by section 6503(a) of title 31 of the U.S. Code. If any amount paid to a State remains unobligated at the end of the fiscal year, the bill requires that such amount must remain available to the State for health planning for the next fiscal year.

Use of allotments

New section 1514(a) provides that a State may use its health planning allotment for any one or more of the following activities: (1) the compilation or conduct of studies and analyses by a State agency or a local public or private entity designated by the State concerning the financing and delivery of health care in the State; (2) the development by public or private entities designated by the State of local plans for the allocation of health services and resources in that locality; (3) the estabishment of a certificate of need program as specified in part C of the bill; (4) the collection and dissemination by public and private entities designated by the State of purchaser information concerning health care services; and (5) as-

sessments by public and private entities designated by the State of the access to health services by individuals residing in rural areas and by individuals who have no medical insurance or insufficient medical insurance.

New section 1514(b) requires that States grant not less than 30 percent of their health planning allotment to local planning agencies unless the State applies to the Secretary for a waiver from this requirement. If a State applies for and receives a waiver, then the money allotted by a State to local planning agencies would be reallotted on the basis of population by the Secretary to the States that are in compliance with this requirement. This reallotment and 30 percent set aside requirement does not apply to any State which, on September 30, 1985, had a waiver under section 1536 which was in effect on September 30, 1985.

Application for State allotments

New section 1515(a) provides that no health planning allotment may be made to a State unless the Governor submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each application must contain a copy of the State plan required under new section 1518, a copy of the State administrative program required under new section 1519, and a description of any State certificate of need program, as specified under new part C.

New section 1515(b) prohibits the Secretary from approving a State application for a health planning allotment unless the Secretary determines that the State plan, the State administrative program, and the State certificate of need program (if any) are in compliance with the provisions of this title, and that the designated agency has sufficient authority under State law to enforce the State administrative program and the requirements of this title.

New section 1515(c) provides that in any fiscal year, the Federal share of the cost of carrying out any health planning application under this new section would be 75 percent.

New section 1515(d) provides that, notwithstanding new subsections (a) and (b), the Secretary may make a grant to a State for fiscal year 1986 if the State application certifies to the Secretary that the State will comply with the provisions of title XV as in effect on September 30, 1985, and will comply during fiscal year 1987 and each succeeding fiscal year with the provisions of title XV as in effect on and after October 1, 1985.

Grants to local planning agencies

New section 1516(a) provides that a local planning agency in a State may use a health planning grant to assist the dsignated State agency in health planning and resource allocation and to encourage the development of cost effective alternatives to current health care financing and delivery systems. Section 1516(b) requires that the State share in any fiscal year of the cost of carrying out an application of a local planning agency shall not exceed 95 percent for fiscal year 1986, 85 percent for fiscal year 1987, and 75 percent for fiscal year 1988 and each succeeding fiscal year.

Designation of State health services and resources allocation agency

New section 1517 requires the Governor of each State to designate a State agency as the State health services and resources allocation agency. The bill requires the designated agency to develop and administer the State health services and resource allocation plan required under new section 1518; develop and administer the State administrative program required under new section 1519; administer any certificate of need program according to new part C; and prepare the annual report required under new section 1521.

State plans

New section 1518 requires each State's designated agency to prepare a State health services and resources allocation plan. The bill requires that, for each of the first three fiscal years beginning after the date on which a State plan is prepared, the State plan must contain a description of the health care needs of the State for services and facilities; an inventory of the health care services and facilities located in the State; and a comparison of the State's health care needs with the inventory of its health care services and facilities, together with a statement of how the designated agency plans to allocate such services and facilties to meet the State's health care needs.

State administrative program

New section 1519 requires the designated agency to develop a State administrative program for health planning and resource allocation. Such program must (1) provide for the performance in the State of the functions required of the designated agency under new section 1517(b) and must specify that the designate agency is the sole agency responsible for the performance of such functions and for the administration of the State program; (2) contain or be supported by satisfactory evidence that the designated agency has the authority under State law to carry out such functions and the State program; (3) contain a current budget to operate the designated agency; (4) contain provisions for a professional staff for health planning and resource allocation; (5) require the designated agency to perform its functions according to its established procedures and criteria; (6) require the designated agency to comply with State administrative regulations required of other public agencies; (7) provide for fiscal control and acounting procedures consistent with State law; and (8) contain provisions for a staff for the State Advisory Board established under new section 1520. The Governor of each State must approve the State's administrative program.

State advisory boards

New section 1520 requires each State Governor to appoint a State Advisory Board to provide assistance to the designated agency with respect to health planning and resource allocation. The Advisory Board members must be broadly representative of health care consumers, including individuals and major purchasers, and of providers of health care. Two-thirds of the members of the Advisory Board must be major purchasers. Each State Advisory Board would be required to review the State plan required under

new section 1518 and the designated agency's annual report required under new section 1521, and to prepare and transmit to the Governor a report containing its comments on the plan and the annual report. The designated agency would be required to include the Advisory Board's report in its annual report required under new section 1521. Each State Advisory Board would be required to meet at least once a year.

Annual report

New section 1521(a) requires that by December 1 of each year, each designated agency must prepare and transmit to the Governor an annual report. The annual report must contain (1) a copy of the State plan required under new section 1518; (2) a summary of the activities of the designated agency in carrying out any certificate of need program, as specified in new part C; (3) for each major type of health care provider, a summary statement of total revenues obtained in the preceding year, per capita expenditures of each such type of provider during the preceding fiscal year, changes in charges for health care services and changes in the volume of health care services used in the preceding fiscal year, and the rate of change in per capita expenditures by each such provider during the preceding fiscal year; and (4) the State Advisory Board report required under new section 1520.

New section 1521(b) requires each State Governor, by January 1 of each year, to transmit to the Secretary the annual report and comments by the Governor on the report. The Governor would be required to publish and make the report (including such comments) available to the public.

Centers for health planning

New section 1522(a) requires the Secretary to assist public or private nonprofit entities, through grants or contracts or both, in meeting the costs of operating two centers for multidisciplinary health planning development and assistance. The Secretary would be required, to the extent practicable, to provide assistance to centers which were in existence on September 30, 1985. The purpose of such centers is to assist the Secretary in carrying out the health planning program by providing technical and consulting assistance as may be required by designated agencies; by conducting research, studies, and analyses of health planning and resources development; and by developing health planning approaches, methodologies, policies, and standards.

New section 1522(b) provides that the Secretary must determine that a center meets the following requirements and is able to provide assistance and dissemination of information to designated agencies in order to receive a grant or contract under this new section. The requirements are: the center must have a full-time director who possesses a demonstrated capacity for substantial accomplishment and leadership in the field of health planning and resources development, and there must be such additional professional staff as may be appropriate; the staff of the center must represent a diversity of relevant disciplines; and any additional requirements as may be prescribed by the Secretary.

New section 1522(c) provides that centers receiving assistance under this new section may enter into arrangements with designated agencies for the provision of appropriate and necessary services to assist such agencies in performing their health planning functions, and must develop and use methods which are satisfactory to the Secretary to disseminate to designated agencies planning approaches, methodologies (including methodologies to educate and provide continuing education to new board members and the staff of such agencies), policies, and standards.

New section 1522(d) requires that each center must be located on the geographical half of the continental United States that it would serve.

NEW PART C—CERTIFICATE OF NEED PROGRAM

Certificate of need program

New section 1530(a) provides if a State establishes a certificate of need (CON) program, such program must provide for the following:

(1) review and determination of need for major medical equipment, institutional health services, and capital expenditures, before such equipment is acquired, such services are offered or substantial expenditures are undertaken to prepare for such offering, or capital expenditures are obligated;

(2) acquisition and offering of only such equipment and services, and the obligation of only those capital expenditures, which the designated agency finds are needed. Except as otherwise authorized by this new section 1530, the only criteria allowed for review of an application for, and for the issuance of, a certificate of need could be (a) criteria in new section 1531(c), (b) criteria in regulations promulgated by the Secretary under section 1532(a) as in effect before the enactment of the Health Planning and Resource Allocation Act of 1986, or (c) criteria prescribed in regulations promulgated by the designated agency in accordance with an authorization in State law. The Secretary could not require any criteria in addition to those described in (a) and (b) above;

(3) specification on the application for a certificate of need of the time required and a timetable for making a proposed institutional health service or medical equipment available, and the time required and a timetable for obligating a proposed capital expenditure. After issuing a certificate of need, the designated agency would be required to periodically review the progress of the holder of the certificate in meeting the timetable specified in the application. If the holder of the certificate is not meeting the timetable and is not making a good faith effort to meet it, the designated agency could withdraw the certificate;

(4) specification by the State in the certificate of need of the maximum amount of capital expenditures which can be obligated under the certificate. According to regulations promulgated by the Secretary, the program must prescribe the extent to which a project with a certificate must be subject to further review if the amount of capital expenditures obligated or expected to be obligated exceeds the maximum in the certificate;

(5) application of the requirements of new section 1531 to the proceedings under the program, and a requirement that issuance of a certificate of need must be made only by the designated agency and must, except in an emergency posing a threat to public health, be consistent with the State plan in effect under new section 1518.

New section 1530(b)(1) prohibits a State certificate of need program from requiring a certicate for certain entities that wish to offer inpatient institutional health services, acquire major medical equipment in order to provide inpatient institutional health services, or obligate a capital expenditure in oder to provide inpatient institutional health services, if the designated agency has granted an exemption from obtaining a certificate of need to such entities. The entities include:

(A) a health maintenance organization (HMO) or a combination of HMOs if the facility in which the services would be provided is or will be located so that the service is reasonably accessible to enrollees in the HMO or HMOs, and if at least 75 percent of the patients reasonably expected to receive the institutional health service will be enrolled in the HMO or HOMs;

(B) a health care facility which primarily provides or will provide inpatient health services, the facility is or will be controlled (directly or indirectly) by an HMO or combination of HMOs, the facility is or will be located so that the service is reasonably accessible to enrollees in the HMO or HMOs, and at least 75 percent of the patients reasonably expected to receive the institutional health service will be enrolled in the HMO or HMOs; or

(C) a health care facility or portion of such facility if (1) it is or will be leased by an HMO or combination of HMOs and if on the date the application for exemption from obtaining a certificate of need is submitted at least 15 years remain on the lease, (2) the facility is or will be located so that the service will be reasonably accessible to enrollees in the HMO or HMOs, and (3) at least 75 percent of the patients reasonably expected to receive the institutional health service will be enrolled in the HMO or HMOs.

New section 1530(b)(2) prohibits an exemption from obtaining a certificate of need unless the HMO, combination of HMOs, or health care facility has submitted an application for exemption as prescribed by the designated agency, the application contains information required by the designated agency, and the application is approved by the designated agency.

New section 1530(b)(3) provides that a health care facility (or any part thereof) or the medical equipment for which an HMO exemption of certificate of need is granted may not be sold or leased, and a controlling interest in the facility or equipment or a lease of such facility or equipment may not be acquired, and a health care facility leased by an HMO which is granted an exemption may not be used by any person other than the lessee unless (A) the designated agency issues a certificate of need approving the sale, lease, acquisition, or use, or (B) the designated agency determines that the entity which intends to buy, lease, acquire controlling interest in,

or use the facility is an HMO or combination of HMOs which meet certain requirements specified in the bill.

New section 1530(b)(4) authorizes a State certificate of need program to apply its requirements, in the case of an HMO or an ambulatory care facility or a health care facility controlled by an HMO, only to the offering of inpatient institutional health services and the acquisition of major medical equipment and the obligation of capital expenditures for inpatient institutional health services, except to the extent that such offering, acquisition, or obligation is exempt under new section 1530(b)(1).

New section 1530(b)(5) requires the designated agency to approve the certificate of need application from an HMO or a health care facility controlled by an HMO if the agency finds (according to criteria prescribed in regulations by the Secretary) that (A) approval of the application is required to meet the needs of the members or potential new members of the HMO, and (B) the HMO is unable to provide its institutional health services in a reasonable and cost effective manner consistant with the basic method of operation of the HMO. A health care facility or medical equipment which obtains a certificate of need under this new subsection could not be sold or leased and controlling interest in the facility or equipment or in a lease of the facility or equipment could not be acquired unless the designated agency issues a certificate of need approving the sale, acquisition, or lease.

New section 1530(c) requires the designated agency to approve a certificate of need application for a capital expenditure required (1) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, (2) to comply with State licensure standards, or (3) to comply with accreditation standards necessary in order to receive reimbursement from the Medicare or Medicaid programs, unless the designated agency finds that the facility or service is not needed or is not consistent with the State plan.

New section 1530(d) requires a certificate of need for a capital expenditure to acquire (by purchase or lease) an existing health care facility if proper notification has not been given to the designated agency, or if the designated agency finds, within 30 days after receiving such notice, that the services or bed capacity of the facility will be changed because of the acquisition. This requirement would not apply to HMO-related capital expenditures as described in new section 1530(b). Before a contractual arrangement is made to acquire an existing health care facility which will require the obligation of a capital expenditure, the designated agency must be notified in writing at least thirty days before the contractual arrangement is made.

New section 1530(e) provides that a State certificate of need program may require a certificate for the acquisition of major medical equipment. However, except as provided in new subsection (b), a certificate of need could not be required to acquire major medical equipment which would not be owned by or located in a health care facility unless proper notification has been made to the designated agency or the designated agency finds, within 30 days after receiving such notice, that the equipment would be used to provide services for hospital inpatients. Before a contractual arrangement

is made to acquire major medical equipment which will not be owned by or located in a health care facility, the designated agency must be notified in writing at least 30 days before the contractual arrangement is made, including the use that will be made of the equipment. Donations, leases, and transfer of equipment for less than fair market value, if the fair market value is at least the expenditure minimum under new section 1501(9), would be considered acquisitions of major medical equipment.

New section 1530(f) provides that when an osteopathic or allopathic facility applies for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the designated agency must consider the need for an the availability in the community of such services and facilities and the impact on existing and proposed institutional training programs for doctors of osteopathy and medicine.

New section 1530(g) provides that a certificate of need would not be required for a health care facility to acquire major medical equipment, for institutional services to be offered, or for a capital expenditure to be obligated, solely for research purposes if such changes do not affect the changes of the facility except for the services included in the research, do not substantially change the bed capacity or the medical or other patient care services of the facility. The facility must notify the designated agency in writing of its intent and the use to be made of such medical equipment, institutional health services, or capital expenditures. However, a certificate of need would be required if the proper notification is not made to the designated agency, or the designated agency finds, within 60 days after receiving the notice, that the above conditions cannot be met. The term "solely for research" would include patient care provided on an occasional and irregular basis and not as part of a research program.

Procedures and criteria for review of certificate of need determinations

New section 1531(a) provides that the designated agency must follow procedures and apply critieria developed and published in accordance with regulations by the Secretary when reviewing certificate of need (CON) applications or making exemptions under new section 1530.

New section 1531(b) provides that the procedures of the designated agency must include at least the following:

(1) timely written notice to affected persons of the beginning of a review of a CON application or exemption;

(2) an established time period for a CON approval or disapproval, which may vary with the type of project but may not exceed 120 days; an application or exemption not approved within 120 days would be considered to have been approved;

(3) provisions for the submission of information needed by the designated agency to conduct the review, with an additional 15 days allowed for the submission of any additional information required;

(4) submission of periodic reports by health service providers and others subject to review;

(5) provisions for written findings stating the basis for the designated agency's final decision or recommendation;

(6) timely notification of providers and others subject to CON review of the proposals under review, the findings of the review, and other appropriate information concerning the review;

(7) provisions for public hearings in the course of review if requested by persons directly affected by the review, or, for good cause, after a decision has been made;

(8) access by the general public to all applications reviewed and to all other written materials essential to a designated agency;

(9) for construction projects, submission of letters of intent to inform the designated agency of the scope and nature of a proposed project as early in its planning as possible;

(10) provisions requiring hearings in which any person would have the right to be represented by counsel and to present oral or written arguments and evidence, any person directly affected could conduct reasonable questioning of persons who make relevant factual allegations, and a record of the hearing would be maintained;

(11) provisions requiring that CON decisions by a designated agency must be based solely on its review according to prescribed procedures and on the record established in administrative proceedings, and any decision regarding an exemption must be based solely on the record established in administrative proceedings;

(12) provisions requiring that, if requested by a person directly affected, each CON decision must be reviewed with respect to procedural matters under an appeals mechanism consistent with State law or, if none exists, then by an entity designated by the Governor; no decision by a designated agency would be subject to de novo administrative review;

(13) provisions permitting persons adversely affected by a final decision to, within a reasonable period of time after the decision and any administrative review of the decision, obtain judicial review of the decision in an appropriate State court; the decision of the designated agency would be affirmed unless it is found to be arbitrary or capricious or not made in compliance with law;

(14) provisions requiring that there be no ex parte contacts between an applicant for CON, any person acting on behalf of the applicant, or any person opposed to the CON, and any person in the designated agency who exercises responsibility for the application after a hearing has begun and before a decision has been made; similar requirements would pertain in the case of a proposed withdrawal of a CON.

New section 1531(c) provides that the criteria for a designated agency's review must include:

(1) the relationship of the health services being reviewed to the State plan;

(2) the relationship of services reviewed to any long-range development plan of the person providing or proposing such services;

(3) the need of the population served or to be served for such services;

(4) the availability of alternative, less costly, or more effective methods of providing such services;

(5) the relationship of services reviewed to the existing health care system of the area;

(6) for proposed health care services, the availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of such services; the effect of the delivery of such services on the clinical needs of health professional training programs in the area; if such services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes; the availability of alternative uses of such resources for the provision of other health services; and the extent to which such proposed services will be accessible to all residents of the area;

(7) the special needs and circumstances of HMOs;

(8) for a construction project, the costs and methods of the proposed construction (including energy provision) and the probable impact of the project on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons;

(9) the special circumstances of health service institutions and the need for conserving energy;

(10) the factors which affect competition's effect on the supply of health services being reviewed;

(11) improvements or innovations in the financing and delivery of health services which foster competition, quality assurance, and cost-effectiveness;

(12) the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(13) the quality of care provided by existing services or facilities in the past.

NEW PART D—OTHER FEDERAL RESPONSIBILITIES

National Health Planning and Resource Control Council

New section 1541 establishes a National Health Planning and Resource Control Council to review and analyze the annual reports received by the Secretary from the States under new section 1521; to advise and assist the Secretary with the report to Congress required under new section 1542; and to make recommendations to the Secretary with respect to health care planning and resource allocation. The National Council would consist of 15 members to be appointed by the Secretary as follows: a majority to be representatives of major purchasers, two to be heads of designated agencies, two to be representatives of providers of health care, one to be an individual consumer of health care. The Chairman of the National Council would be elected by the Council members from the representatives of major purchasers. The term of office for members would be four years, except that the Secretary must divide the ini-

tial appointments into three groups of five members each for initial terms of one, two, and three years. Eight members would constitute a quorum, but a lesser number could hold hearings. A vacancy would not affect the Council's authority. Each member would receive compensation at the rate of a level 6 of the Senior Executive Schedule for each day, including travel time, of duties for the Council; reimbursement would be made for travel, subsistence, and other necessary expenses.

Annual report

New section 1542 requires the Secretary, by March 1 of each year, to prepare and send to Congress a report on the health planning activities of the previous fiscal year, including a summary of State activities; a comparison of the cost of health care in each State with the cost in all other States; a comparison of the cost of health care provided by each type of provider in a State with the cost of health care by each such type of provider in all other States; a comparison of the costs of health care and health care by type of provider in States receiving payments under Part B and States not receiving any payments under this new title; a specification, for the Nation and for each State, of total revenues from health care services, the per capita cost of health care services and the rate of increase from the preceding fiscal year, and a comparison of the changes in the per capita cost to the volume of services provided and to the price of services provided; and a description of changes in the supply of health care resources during the preceding fiscal year.

EFFECTIVE DATE

Section 3(c) makes the effective date 120 days after enactment, except that the Secretary could issue regulations any time after enactment of this Act.

GRANT AMOUNTS TO STATE AND LOCAL PLANNING AGENCIES

Section 3(d) prohibits State or local planning agencies from receiving grant amounts which are less than they received in fiscal year 1985 under title XV as it was then in effect. If the total amount available for grants to State and local planning agencies is insufficient to carry out this requirement, then each grant to State and local planning agencies must be reduced proportionately.

X. Changes in Existing Law

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

TITLE I—SHORT TITLE AND DEFINITIONS

SHORT TITLE

SECTION 1. This Act may be cited as the "Public Health Service Act".

DEFINITIONS

SEC. 2. When used in this Act—

(a) The term "Service" means the Public Health Service;

(b) The term "Surgeon General" means the Surgeon General of the Public Health Service;

(c) Unless the context otherwise requires, the term "Secretary" means the Secretary of Health, Education, and Welfare;

(d) The term "regulations", except when otherwise specified, means rules and regulations made by the Surgeon General with the approval of the Secretary;

(e) The term "executive department" means any executive department, agency, or independent establishment of the United States or any corporation wholly owned by the United States;

(f) Except as provided in sections 314(g)(4)(B, 318(c)(1), 331(h)(3), 335(5), 361(d), 701(9), 1002(c), 1401(13), [1531(1),] and 1633(1), the term "State" includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

* * * * * * *

[TITLE XV—NATIONAL HEALTH PLANNING AND DEVELOPMENT

[PART A—NATIONAL GUIDELINES FOR HEALTH PLANNING

[NATIONAL GUIDELINES FOR HEALTH PLANNING

[SEC. 1501. (a) The Secretary shall, within eighteen months after the date of the enactment of this title, by regulation issue guidelines concerning national health planning policy. Regulations under this subsection shall be promulgated in accordance with section 553 of title 5, United States Code.

[(b) The Secretary shall include in the guidelines issue under subsection (a) the following:

[(1) Standards respecting the appropriate supply, distribution, and organization of health resources. Such standards shall reflect the unique circumstances and needs of medically underserved populations including those in isolated rural communities.

[(2) A statement of national health planning goals developed after consideration of the priorities, set forth in section 1502, which goals, to the maximum extent practicable, shall be expressed in quantitative terms.

[(c) At least 45 days before the initial publication of a regulation proposing a guideline under subsection (a) or a revision under subsection (d) of such guidelines, the Secretary shall, with respect to such proposed guideline or revision, consult with and solicit recommendations and comments from the health systems agencies designated under part B, the State health planning and development agencies designated under part C, the Statewide Health Coordinating Councils established under Part C, associations and specialty societies representing medical and other health care providers, and the National Council on Health Planning and Development established by section 1503.

[(d) The Secretary shall, on an annual basis, review the standards and goals included in the guidelines issued under subsection (a). In conducting such a review, the Secretary shall review the health systems plans and annual implementation plans of health systems agencies and State health plans. If the Secretary proposes to revise a guideline issued under subsection (a), he shall make such revision by regulations promulgated in accordance with section 553 of title 5, United States Code.

[(e)(1) The Secretary may collect data to determine whether the health care delivery systems meet or are changing to meet the goals included in health systems plans under section 1513(b)(2) and State health plans under section 1524 and to determine the personnel, facilities, and other resources needed to meet such goals. The Secretary shall prescribe (A) the manner in which such data shall be assembled and reported to the Secretary by health systems agencies, State health planning and development agencies, and other entities, and (B) the definitions which shall be used by such agencies and entities in assembling and reporting such data.

[(2) The Secretary shall from the data collected under paragraph (1) periodically make public a (A) statement of the relationship between the goals contained in the health systems plans and the State health plans and the status of the supply, distribution, and organization of health resources with respect to which such goals were established, and (B) summary of changes (either through additions or reductions) in resources needed to meet such goals.

NATIONAL HEALTH PRIORITIES

[SEC. 1502. (a) The Congress finds that the following deserve priority consideration in the formulation of national health planning goals and in the development and operation of Federal, State, and area health planning and resources development programs:

[(1) The provision of primary care services for medically underserved populations, especially those which are located in rural or economically depressed areas.

[(2) The development of multi-institutional systems for coordination or consolidation of institutional health services (including obstetric, pediatric, emergency medical, intensive and coronary care, and radiation therapy services).

[(3) The development of medical group practices (especially those whose services are appropriately coordinated or integrated with institutional health services), health maintenance or-

ganizations, and other organized systems for the provision of health care.

[(4) The training and increased utilization of physician assistants, especially nurse clinicians.

[(5) The development of multi-institutional arrangements for the sharing of support services necessary to all health service institutions.

[(6) The promotion of activities to achieve needed improvements in the quality of health services, including needs identified by the review activities of Professional Standards Review Organizations under part B of title XI of the Social Security Act.

[(7) The development by health service institutions of the capacity to provide various levels of care (including intensive care, acute general care, and extended care) on a geographically integrated basis.

[(8) The promotion of activities for the prevention of disease, including studies of nutritional and environmental factors affecting health and the provision of preventive health care services.

[(9) The adoption of uniform cost accounting, simplified reimbursement, and utilization reporting systems and improved management procedures for health service institutions and the development and use of cost saving technology.

[(10) The development of effective methods of educating the general public concerning proper personal (including preventive) health care and methods for effective use of available health service.

[(11) The promotion of an effective energy conservation and fuel efficiency program for health service institutions to reduce the rate of growth of demand for energy.

[(12) The identification and discontinuance of duplicative or unneeded services and facilities.

[(13) The adoption of policies which will (A) contain the rapidly rising costs of health care delivery, (B) insure more appropriate use of health care services, and (C) promote greater efficiency in the health care delivery system.

[(14) The elimination of inappropriate placement in institutions of persons with mental health problems and the improvement of the quality of care provided those with mental health problems for whom institutional care is appropriate.

[(15) Assurance of access to community mental health centers and other mental health care providers for needed mental health services to emphasize the provision of outpatient as a preferable alternative to inpatient mental health services.

[(16) The promotion of those health services which are provided in a manner cognizant of the emotional and psychological components of the prevention and treatment of illness and the maintenance of health.

[(17) The strengthening of competitive forces in the health services industry wherever competition and consumer choice can constructively serve, in accordance with subsection (b), to advance the purposes of quality assurance, cost effectiveness, and access.

[(b)(1) The Congress finds that the effect of competition on decisions of providers respecting the supply of health services and facilities is diminished. The primary source of the lessening of such effect is the prevailing methods of paying for health services by public and private health insurers, particularly for inpatient health services and other institutional health services. As a result, there is duplication and excess supply of certain health services and facilities, particularly in the case of inpatient health services.

[(2) For health services, such as inpatient health services and other institutional health services, for which competition does not or will not appropriately allocate supply consistent with health systems plans and State health plans, health systems agencies and State health planning and development agencies should in the exercise of their functions under this title take actions (where appropriate to advance the purposes of quality assurance, cost effectiveness, and access and the other purposes of this title) to allocate the supply of such services.

[(3) For the health services for which competition appropriately allocates supply consistent with health systems plans and State health plans, health systems agencies and State health planning and development agencies should in the performance of their functions under this title give priority (where appropriate to advance the purposes of quality assurance, cost effectiveness, and access) to actions which would strengthen the effect of competition on the supply of such services.

[NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

[SEC. 1503. (a) There is established in the Department of Health, Education, and Welfare an advisory council to be known as the National Council on Health Planning and Development (hereinafter in this section referred to as the "Council"). The Council shall advise, consult with, and make recommendations to, the Secretary with respect to (1) the development of national guidelines under section 1501, (2) the implementation and administration of this title and title XVI, and (3) an evaluation of the implications of new medical technology for the organization, delivery, and equitable distribution of health care services.

[(b)(1) The Council shall be composed of twenty members. The Chief Medical Director of the Veterans' Administration, the Assistant Secretary for Health and Environment of the Department of Defense, the Assistant Secretary for Rural Development of the Department of Agriculture, and the Assistant Secreary for Health of the Department of Health, Education, and Welfare shall be nonvoting ex officio members of the Council. The remaining members shall be appointed by the Secretary and shall be persons who, as a result of their training, experience, or attainments, are exceptionally well qualified to assist in carrying out the functions of the Council. Of the voting members, not less than eight members shall be persons who are not providers of health care and those members shall include individuals who represent urban and rural medically underserved populations, not more than three shall be officers or employees of the Federal Government, not less than one member shall represent hospitals, not less than three shall be members of

governing bodies of health systems agencies designated under part B, and not less than three shall be members of Statewide Health Coordinating Councils established under section 1524. The two major political parties shall have equal representation among the voting members on the Council.

[(2) The term of office of voting members of the Council shall be six years, except that—

[(A) of the members first appointed to the Council, four shall be appointed for terms of two years and four shall be appointed for terms of four years, as designated by the Secretary at the time of appointment; and

[(B) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

A member may serve after the expiration of his term until his successor has taken office.

[(3) The chairman of the Council shall be selected by the voting members from among their number. The term of office of the chairman of the Council shall be the lesser of three years or the period remaining in his term of office as a member of the Council.

[(c)(1) Except as provided in paragraph (2), the members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council.

[(2) Members of the Council who are full-time officers or employees of the United States shall receive no additional pay on account of their services on the Council.

[(3) While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

[(d) The Council may appoint, fix the pay of, and prescribe the functions of such personnel as are necessary to carry out its functions. In addition, the Council may procure the services of experts and consultants as authorized by section 3109 of title 5, United States Code, but without regard to the last sentence of such section.

[(e) The provisions of section 14(a) of the Federal Advisory Committee Act shall not apply with respect to the Council.

[PART B—HEALTH SYSTEMS AGENCIES

[HEALTH SERVICE AREAS

[SEC. 1511. (a) Except as provided in section 1536, there shall be established, in accordance with this section, health service areas throughout the United States with respect to which health systems agencies shall be designated under section 1515. Each health service area shall meet the following requirements:

[(1) The area shall be a geographic region appropriate for the effective planning and development of health services, determined on the basis of factors including population and the availability of resources to provide all necessary health services for residents of the area.

[(2) To the extent practicable, the area shall include at least one center for the provision of highly specialized health services.

[(3) The area, upon its establishment, shall have a population of not less than five hundred thousand or more than three million; except that—

[(A) the population of an area may be more than three million if the area includes a standard metropolitan statistical area (as determined by the Office of Management and Budget) with a population of more than three million, and

[(B) the population of any area may—

[(i) be less than five hundred thousand if the area comprises an entire State which has a population of less than five hundred thousand, or

[(ii) be less than

[(I) five hundred thousand (but not less than two hundred thousand) in unusual circumstances (as determined by the Secretary), or

[(II) two hundred thousand in highly unusual circumstances (as determined by the Secretary),

[if the Governor of each State in which the area is located determines, with the approval of the Secretary, that the area meets the other requirements of this subsection.

[(4) To the maximum extent feasible, the boundaries of the area shall be appropriately coordinated with the boundaries of the areas designated under section 1152 of the Social Security Act for Professional Standards Review Organizations, existing regional planning areas, and State planning and administrative area.

The boundaries of a health service area shall be established so that, in the planning and development of health services to be offered within the health service area, any economic or geographic barrier to the receipt of such services in nonmetropolitan areas is taken into account. The boundaries of health service areas shall be established so as to recognize the differences in health planning and health services development needs between nonmetropolitan and metropolitan areas. Each standard metropolitan statistical area shall be entirely within the boundaries of one health service area, except that if the Governor of each State in which a standard metropolitan statistical area is located determines, with the approval of the Secretary, that in order to meet the other requirements of this subsection a health service area should contain only part of the standard metropolitan statistical area, then such statistical area shall not be required to be entirely within the boundaries of such health service area.

[*(b)(1) Within thirty days following the date of the enactment of this title, the Secretary shall simultaneously give to the Governor of each State written notice of the initiation of proceedings to establish*

health service areas throughout the United States. Each notice shall contain the following:

[(A) A statement of the requirement (in subsection (a)) of the establishment of health service areas throughout the United States.

[(B) A statement of the criteria prescribed by subsection (a) for health service areas and the procedures prescribed by this subsection for the designation of health service area boundaries.

[(C) A request that the Governor receiving the notice (i) designate the boundaries of health service areas within his State, and where appropriate and in cooperation with the Governors of adjoining States, designate the boundaries within his State of health service areas located both in his State and in adjoining States, and (ii) submit (in such form and manner as the Secretary shall specify) to the Secretary, within one hundred and twenty days of the date of enactment of this title, such boundary designations together with comments, submitted by the entities referred to in paragraph (2), with respect to such designations.

At the time such notice is given under this paragraph to each Governor, the Secretary shall publish as a notice in the Federal Register a statement of the giving of his notice to the Governor and the criteria and procedures contained in such notice.

[(2) Each State's Governor shall in the development of boundaries for health service areas consult with and solicit the views of the chief executive officer or agency of the political subdivisions within the State, the State agency which administers or supervises the administration of the State's health planning functions under a State plan approved under section 314(a), each entity within the State which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b), and each regional medical program established in the State under the title IX.

[(3)(A) Within two hundred and ten days after the date of enactment of this title, the Secretary shall publish as a notice in the Federal Register the health service area boundary designations. The boundaries for health service areas submitted by the Governors shall, except as otherwise provided in subparagraph (B), constitute, upon their publication in the Federal Register the boundaries for such health service areas.

[(B)(i) If the Secretary determines that a boundary submitted to him for a health service area does not meet the requirements of subsection (a), he shall, after consultation with the Governor who submitted such boundary, make such revision in the boundary for such area (and as necessary, in the boundaries for adjoining health service areas) as may be necessary to meet such requirements and publish such revised boundary (or boundaries); and the revised boundary (or boundaries) shall upon publication in the Federal Register constitute the boundary (or boundaries) for such health service area (or areas). The Secretary shall notify the Governor of each State in which is located a health service area whose boundary is revised under this clause of the boundary revision and the reasons for such revision.

[(ii) In the case of areas of the United States not included within the boundaries for health service areas submitted to the Secretary as requested under the notice under paragraph (1), the Secretary shall establish and publish in the Federal Register health service area boundaries which include such areas. The Secretary shall notify the Governor of each State in which is located a health service area the boundary for which is established under this clause of the boundaries established. In carrying out the requirement of this clause, the Secretary may make such revisions in boundaries submitted under subparagraph (A) as he determines are necessary to meet the requirement of subjection (a) of the establishment of health service areas throughout the United States

[(4) The Secretary shall review on his own initiative or at the request of any Governor or designated health systems agency the appropriateness of the boundaries of the health service areas established under paragraph (3) and, if he determines that—

[(A) the boundaries for a health service area no longer meet the requirements of subsection (a), or

[(B) the boundaries for a proposed revised health service area meet the requirements of subsection (a) in a significantly more appropriate manner in terms of the efficiency and effectiveness of health planning efforts.

he shall revise the boundaries in accordance with the procedures prescribed by paragraph (3)(B)(ii). If the Secretary acts on his own initiative to revise the boundaries of any health service area, he shall consult with the Governor of the State or States which would be affected by the revision, the chief executive officer or agency of the political subdivisions within such State or States, and the designated health systems agency or agencies and the established Statewide Health Coordinating Council or Councils that would be affected by the revision. A Governor may request a revision of the boundaries of a health service area only after consultation with the Governor of any State or States that would be affected by the revision, the chief executive officer or agency of the political subdivisions within such State or States, and the designated health systems agencies and the established Statewide Health Coordinating Council or Councils that would be affected by the revision and shall include in such request the comments concerning the proposed revision made by such individuals and entities. A designated health systems agency may request a revision of the boundaries of its health service area only after consultation with the Governor of the State or States that would be affected by the revision, the chief executive officer or agency of the political subdivisions within such State or States, the Statewide Health Coordinating Council of such State or States, and the health systems agencies that would be affected by the revision and shall include in such request the comments concerning the proposed revision made by such individuals and entities. No proposed revision of the boundaries of a health service area shall comprise an entire State without the prior consent of the Governor of such State. In addition, for each proposed revision of the boundaries of a health service area, the Secretary shall give notice and an opportunity for a hearing to all interested persons and make a written determination of his findings and decision.

[(5) Within one year after the date of the enactment of this title the Secretary shall complete the procedures for the initial establishment of the boundaries of health service areas which (except as provided in section 1536) include the geographic area of all the States.

[HEALTH SYSTEMS AGENCIES

[SEC. 1512. (a) DEFINITION.—For purposes of this title, the term "health systems agency" means an entity which is organized and operated in the manner described in subsection (b) and which is capable, as determined by the Secretary, of performing each of the functions described in section 1513. The Secretary shall by regulation establish standards and criteria for the requirements of subsection (b) and section 1513.

[(b)(1) LEGAL STRUCTURE.—A health systems agency for a health service area shall be—

[(A) a nonprofit private corporation (or similar legal mechanism such as a public benefit corporation) which is incorporated in the State in which the largest part of the population of the health service area resides, which is not a subsidiary of, or otherwise controlled by, any other private or public corporation or other legal entity, and which only engages in health planning and development functions;

[(B) a public regional planning body if (i) it has a governing board composed of a majority of elected officials of units of general local government or it is authorized by State law (in effect before the date of enactment of this subsection) to carry out health planning and review functions such as those described in section 1513, and (ii) its planning area is identical to the health service area; or

[(C) a single unit of general local government if the area of the jurisdiction of that unit is identical to the health service area.

A health system agency may not be an educational institution or operate such an institution.

[(2) STAFF.—

[(A) EXPERTISE.—A health systems agency shall have a staff which provides the agency with expertise in at least the following: (i) Administration, (ii) the gathering and analysis of data, (iii) health planning, (iv) development and use of health (including mental health) resources, (v) financial and economic analysis, and (vi) prevention of disease and other public health matters. The functions of planning and of development of health (including mental health) resources shall be conducted by staffs with skills appropriate to each function. At least one member of the staff shall be designated to have the responsibility of providing the members of the governing body of an agency (particularly the consumer members) with such information and technical assistance as they may require to effectively perform their functions.

[(B) SIZE AND EMPLOYMENT.—The size of the professional staff of any health systems agency shall be not less than five, except that if the quotient of the population (rounded to the

next highest one hundred thousand) of the health service area which the agency serves divided by one hundred thousand is greater than five, the minimum size of the professional staff shall be the lesser of (i) such quotient, or (ii) twenty-five. The members of the staff shall be selected, paid, promoted, and discharged in accordance with such system as the agency may establish, except that the rate of pay for any position shall not be less than the rate of pay prevailing in the health service area for similar positions in other public or private health service entities. If necessary for the performance of its functions, a health systems agency may employ consultants and may contract with individuals and entities for the provision of services. Compensation for consultants and for contracted services shall be established in accordance with standards established by regulation by the Secretary.

[(3) GOVERNING BODY.—

[(A) IN GENERAL.—A health systems agency which is a public regional planning body or unit of general local government shall, in addition to any other governing body, appoint a governing body for health planning in accordance with subparagraph (C) which shall have the responsibilities prescribed by subparagraph (B), and which shall have exclusive authority to perform the functions described in section 1513. Any other health systems agency shall have a governing body composed, in accordance with subparagraph (C), of not less than ten members and of not more than thirty members, except that the number of members may exceed thirty if the governing body has established another unit (referred to in this paragraph as an "executive committee") composed, in accordance with subparagraph (C), of not less than ten members and not more than thirty members of the governing body and has delegated to that unit the authority to take such action (other than the establishment and revision of the plans referred to in subparagraph (B)(ii) as the governing body is authorized to take.

[(B) RESPONSIBILITIES.—The governing body—

[(i) shall be responsible for—

[(I) the internal affairs of the health systems agency, including matters relating to the staff of the agency and the agency's budget, except that the governing body for health planning of an agency which is a public regional planning body or unit of general local government shall not be responsible for the establishment of personnel rules and practices for the staff of the agency or for the agency's budget unless authorized by the planning body or unit of government, and

[(II) procedures and criteria developed and published pursuant to section 1532 and applicable to its functions under subsections (e), (f), and (g) of section 1513;

[(ii) shall be responsible for the establishment of the health systems plan and annual implementation plan required by section 1513(b) and in the case of a health systems agency which is a public regional planning body or

unit of general local government, the planning body or unit of government shall be given, in accordance with sections 1513(b)(2) and 1513(b)(3), a reasonable opportunity to comment on the health systems plan and annual implementation plan proposed by the governing body and to propose additions to and other revisions in it;

[(iii) shall be responsible for the approval or disapproval of grants and contracts made and entered into under section 1513(c)(3);

[(iv) shall be responsible for the approval or disapproval of all actions taken pursuant to subsections (e), and (f), and (g), of section 1513;

[(v) shall (I) issue an annual report concerning the activities of the agency, (II) include in that report the health systems plan and annual implementation plan developed by the agency, and a listing of the agency's income, expenditures, assets, and liabilities, and (III) make the report readily available to the residents of the health service area and the various communications media serving such area;

[(vi) shall reimburse (or when appropriate make advances to) its members for the reasonable costs incurred in attending meetings of the governing body and performing any other duties and functions of the health systems agency;

[(vii) shall meet at least once in each calendar quarter of a year and shall meet at least two additional times in a year unless its executive committee meets at least twice that year; and

[(viii) shall (1) hold in public meetings to conduct the business of the agency (other than any part of a meeting in which it is likely, as determined by the governing body, that information, respecting the performance or remuneration of an employee of the agency will be disclosed and such a disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee or that information relating to the agency's participation in a judicial proceeding will be disclosed), (II) give adequate notice to the public of such of such meetings, and (III) make records and data of the agency (other than records or data respecting the performance or remuneration of an employee the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of the employee and records or data of the agency relating to its participation in a judicial proceeding) available, upon request, to the public.

The governing body (and executive committee (if any)) of a health systems agency shall act only by vote of a majority of its members present and voting at a meeting called upon adequate notice to all of its members and at which a quorum is in attendance. A quorum for a governing body and executive committee shall be not less than one-half of its members.

[(C) COMPOSITION.—The membership of the governing body and the executive committee (if any) of an agency shall meet the following requirements:

[(i) A majority (but not more than 60 per centum of the members) shall be (I) residents of the health service area served by the entity who are consumers of health care and who are not providers of health care, and (II) broadly representative of the health service area and shall include individuals representing the principal social, economic, linguistic, handicapped, and racial populations and geographic areas of the health service area and major purchasers of health care (including labor organizations and business corporations) in the area.

[(ii) The remainder of the members shall be residents of, or have their principal place of business in, the health service area served by the agency who are providers of health care and who represent (I) physicians (particularly practicing physicians,) dentists, nurses, optometrists, podiatrists, physician assistants, and other health professionals, (II) health care institutions (particularly hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities and health maintenance organizations, (III) health care insurers, (IV) health professional schools, (V) the allied health professions, and (VI) other providers of health care. Not less than one-half of the providers of health care who are members of the governing body or executive committee of health systems agency shall be direct providers of health care (as described in section 1531(3)) and of such direct providers of health care, at least one shall be a person engaged in the administration of a hospital.

[(iii) The membership shall—

[(I) include (either through consumer or provider members) public elected officials and other representatives of units of general purpose local government in the agency's health service area and representatives of public and private agencies in the area concerned with health,

[(II) include a percentage of individuals who reside in nonmetropolitan areas within the health service area which percentage is at least equal to the percentage of residents of the area who reside in nonmetropolitan areas,

[(III) include (through consumer and provider members) individuals who are knowledgeable about mental health services,

[(IV) if the health systems agency serves an area in which there is located one or more hospitals or other health care facilities of the Veterans' Administration, include, as a nonvoting, ex officio member, an individual whom the Chief Medical Director of the Veterans' Administration shall have designated for such purpose, and

[(V) if the agency serves an area in which there is located one or more health maintenance organizations, include at least one member who is representative of such organizations.

[(iv) If, in the exercise of its functions, a governing body or executive committee appoints a subcommittee or an advisory group, it shall, to the extent practicable, make its appointments to any such subcommittee or group in such a manner as to provide the representation on such subcommittee or group described in this subparagraph, except that appointments shall be made to such subcommittees and groups in such a manner that a majority of their members shall be consumers of health care.

[For purposes of clause (iii)(I), to be considered a representative of a unit of general purpose local government, an individual must be appointed by such unit or a combination thereof, and the State government of a State which is comprised of a single health service area shall be deemend to be a unit of general purpose local government. A member of a governing body appointed pursuant to clause (iii)(IV) shall not be considered in determining the number of members of the governing body for purposes of the numerical limit prescribed by subparagraph (A).

[(D) SELECTION.—Each health systems agency shall establish a process for the selection of the members of its governing body which process is designed to assure that (i) such members are selected in accordance with the requirements of subparagraph (C), (ii) there is the opportunity for broad participation in such process by the residents of the health service area of the agency, and (iii) the participation of such residents will be encouraged and facilitated. Such process shall prohibit the selection of more than one-half of the members of such body by members of such body. Each agency shall make public such process and report it to the Secretary. The requirements of this subparagraph shall apply with respect to the selection of members of a subarea advisory council if the council is authorized to select or selects one or more members of the governing body of a health systems agency.

[(E) SUPPORT.—Each health systems agency shall have an identifiable program of providing assistance to the members of its governing body, executive committee (if any), and any entity appointed by the governing body or executive committee in making decisions for the agency, and shall include in such program means to determine the support needs of the members and to provide for meeting those needs (including the provision of training and continuing education).

[(F) CONFLICTS OF INTEREST.—No member of a governing body, executive committee, or any entity appointed by a governing body, or executive committee may, in the exercise of any function of the agency described in subsection (e), (f), or (g) of section 1513, vote on any matter before the governing body, executive committee, or any such entity respecting and individual or entity with which such member has (or, within the twelve months preceding the vote, had) any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. A governing body, executive committee, and any entity appointed by a governing body or executive committee shall require each of its members who has

or has had such a relationship with an individual or entity involved in any matter before the governing body, committee, or entity to make a written disclosure of such relationship before any action is taken by the body, committee, or entity with respect to such matter in the exercise of any function of the agency described in section 1513 and to make such relationship public in any meeting in which such action is to be taken.

[(4) LIABILITY.—

[(A) IN GENERAL.—Except as provided in subparagraph (B)—

[(i) a health systems agency shall not, by reason of the performance of any duty, function, or activity, required of, or authorized to be undertaken by, the agency, be liable for the payment of damages under any law of the United States or any State (or political subdivision thereof) if the member of the governing body of the agency or employee of the agency who acted on behalf of the agency in the performance of such duty, function, or activity acted within the scope of his duty, function, or activity as such a member of employee, exercised due care, and acted without malice toward any person affected by it; and

[(ii) no individual member of the governing body of a health systems agency or employee of a health systems agency shall, by reason of his performance on behalf of the agency of any duty, function, or activity required of, or authorized to be undertaken by, the agency, be liable for the payment of damages under any law of the United States or any State (or political subdivision of a State) if he believed he was acting within the scope of his duty, function, or activity as such a member or employee, and, with respect to such performance, acted without gross negligence or malice toward any person affected by it.

[(B) EXCEPTION.—Subparagraph (A) does not apply with respect to civil actions for bodily injury to individuals or physical damages to property brought against a health systems agency or any member of the governing body of or employee of such an agency.

[(5) PRIVATE CONTRIBUTIONS.—No health systems agency may accept any funds or contributions of services or facilities from any individual or private entity which has a financial, fiduciary, or other direct interest in the development, expansion, or support of health resources unless, in the case of an entity, it is an organization described in section 509(a) of the Internal Revenue Code of 1954 and is not directly engaged in the provision of health care in the health service area of the agency. For purposes of this paragraph, an entity shall not be considered to have such an interest solely on the basis of its providing (directly or indirectly) health care for its employees or health insurance.

[(6) OTHER REQUIREMENTS.—Each health system agency shall—

[(A) provide that any executive committee of the agency and any entity appointed by the governing body or executive committee of the agency shall (i) hold in public meetings to conduct the business of the committee or entity (other than any part of a meeting in which it is likely, as determined by the executive committee or entity, that information respecting the

performance or remuneration of an employee of the agency will be disclosed and such disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee or that information relating the agency's participation in a judicial proceeding will be disclosed), and (ii) give adequate notice of its meetings to those persons who have requested such notice;

[(B) make such reports, in such form and containing such information (other than information respecting the performance or remuneration of an employee of the agency the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of the employee or information relating the agency's participation in a judicial proceeding), concerning its structure, operations, performance of functions, and other matters as the Secretary may from time and time require, and keep such records and afford such access thereto as the Secretary may find necessary to verify such reports;

[(C) provide for such fiscal control and fund accounting procedures as the Secretary may require to assure proper disbursement of, and accounting for, amounts received from the Secretary under this title and section 1640; and

[(D) permit the Secretary and Comptroller General of the United States, or their representatives, to have access for the purpose of audit and examination to any books, documents, papers, and records pertinent to the disposition of amounts received from the Secretary under this title and section 1640.

[(c) SUBAREA COUNCILS.—A health systems agency may establish subarea advisory councils representing parts of the agency's health service area to advise the governing body of the agency on the performance of its functions. The composition of a subarea advisory council shall conform to the requirement of subsection (b)(3)(C).

[FUNCTIONS OF HEALTH SYSTEMS AGENCIES

[SEC. 1513. [300*l*-2] (a) For the purpose of—

[(1) improving the health of residents of a health service area,

[(2) increasing the accessibility (including overcoming geographic, architectural, and transportation barriers), acceptability, continuity, and quality of the health services provided them,

[(3) restraining increases in the cost of providing them health services,

[(4) preventing unnecessary duplication of health resources, and

[(5) preserving and improving, in accordance with section 1502(b), competition in the health service area,

each health systems agency shall have as its primary responsibility provision of effective health planning for its health service area and the promotion of the development within the area of health services, manpower, and facilities which meet identified needs, reduce documented inefficiencies, and implement the health plans of the agency. None of the funds authorized to be appropriated under this title may be used by a health systems agency directly to

pay any individual to influence the issuance, amendment, or revocation of any Executive order or regulation by any Federal, State, or local chief executive officer or agency or to influence the passage, amendment or defeat of any legislation by the Congress or by any State or local legislative body. The preceding sentence does not apply with respect to compensation paid by a health systems agency to an employee of the agency unless the primary responsibility of the employee for the agency is to influence such governmental action. To meet its primary responsibility, a health systems agency shall carry out the functions described in subsections (b) through (g) of this section.

[(b) In providing health planning and resources development for its health service area, a health systems agency shall perform the following functions:

[(1) The agency shall assemble and analyze data concerning—

[(A) the status (and its determinants) of the health of the residents of its health service area,

[(B) the status of the health care delivery system in the area and the use of that system by the residents of the area,

[(C) the effect the area's health care delivery system has on the health of the residents of the area,

[(D) the number, type, and location of the area's health resources, including health services, manpower, and facilities,

[(E) the patterns of utilization of the area's health resources, and

[(F) the environmental and occupational exposure factors affecting immediate and long-term health conditions.

The agency shall also assemble and report to the Secretary such data (including data on the personnel, facilities, and other resources needed to meet the goals set forth in the agency's health system plan) as the Secretary may require to carry out his responsibilities under section 1501(e). The Secretary may not require the assembling and reporting of data under this paragraph which is regularly collected by any entity of the Department of Health, Education, and Welfare under a provision of law other than this title. In carrying out this paragraph, the agency shall to the maximum extent practicable use existing data (including data developed under Federal health programs) and coordinate its activities with the cooperative system provided for under section 306(e).

[(2) The agency shall, after appropriate consideration of the recommended national guidelines for health planning policy issued by the secretary under section 1501, the priorities set forth in section 1502, and the data developed pursuant to paragraph (1), establish (in accordance with the format established pursuant to section 1524(c)(1)), at least triennially review, and amend as necessary a health systems plan (hereinafter in this title referred to as the "HSP") which shall be a detailed statement of goals (A) describing a healthful environment (primarily with regard to health care equipment and to health services provided by health care institutions, health care facilities, and

other providers of health care and to other health resources) and health systems in the area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable cost, for all residents of the area; (B) which are responsive to the unique needs and resources (including entities described in section 1532(c)(7)) of the area; (C) which take into account the national guidelines for health planning policy issued by the Secretary under section 1501 respecting supply, distribution, and organization of health resources and services; (D) which are responsive to statewide health needs as determined by the State health planning and development agency; (E) which describe the institutional health services (as defined in section 1531(5)) needed to provide for the well-being of persons receiving care within the health service area, including, at a minimum, acute inpatient (including psychiatric inpatient, obstetrical inpatient, and neonatal inpatient), rehabilitation, and long-term care services; and (F) which describe other health services needed to provide for the well-being of persons receiving care within the health service area, including, at a minimum, preventive, ambulatory, and home health services and treatment for alcohol and drug abuse. The HSP of the agency shall include goals for the delivery of mental health services in its health service area which goals shall be developed under a procedure under which persons (acting as an advisory group or subcommittee appointed by the agency or, if the agency requests and is authorized by the Secretary to use an existing group, acting as part of such a group) knowledgeable about such services (including services for alcohol and drug abuse) will be consulted with respect to such goals. The HSP shall describe the number and type of resources, including facilities, personnel, major medical equipment, and other resources required to meet the goals of the HSP and shall state the extent to which existing health care facilities are in need of modernization, conversion to other uses, or closure and the extent to which new health care facilities need to be constructed or acquired. Before establishing or amending an HSP and in its review of an HSP, a health systems agency shall conduct a public hearing on the proposed HSP and shall give interested persons an opportunity to submit their views orally and in writing. Not less than thirty days prior to such hearing, the agency shall publish in at least two newspapers of general circulation throughout its health service area a notice of its consideration of the proposed HSP, the time and place of the hearing, the place at which interested persons may consult the HSP in advance of the hearing, and the place and period during which to submit written comments to the agency on the HSP. If the health systems agency is a public regional planning body or unit of general local government, the planning body or unit of government shall be given a reasonable opportunity to comment on the proposed HSP and to propose additions to and other revisions in it. Any such proposed additions or other revisions not included in the HSP established by the agency shall be appended to the HSP. If the goals contained in

the HSP are not consistent with guidelines issued by the Secretary under section 1501, it shall provide the State health planning and development agency and the Secretary with a detailed statement of the reasons for the inconsistency between such goals and guidelines. When making such HSP available to a Statewide Health Coordinating Council under section 1524(c)(2)(A), the agency shall also report such statement to such Council.

[(3) The agency shall establish, annually review, and amend as necessary an annual implementation plan (hereinafter in this title referred to as the "AIP") which describes objectives which will achieve the goals of the HSP (as stated in the HSP of the agency or, if revised under sectionf 1524(c)(2)(A) when included in the State health plan, as so revised) and priorities among the objectives. In establishing the AIP, the agency shall give priority to those objectives which will maximally improve the health of the residents of the area, as determined on the basis of the relation of the cost of attaining such objectives to their benefits, and which are fitted to the special needs of the area. The AIP shall include a statement of the personnel, facilities, and other resources which the agency determines are required to meet the objectives described pursuant to the first sentence. The AIP shall be established, annually reviewed, and amendmed in accordance with the procedures set forth in the last two sentences of paragraph (2). If the health systems agency is a public regional planning body or unit of government shall be given a reasonable opportunity to comment on the proposed AIP and to propose additions to and other revisions in it. Any such proposed additions or other revisions not included in the AIP approved by the agency shall be appended to the AIP.

[(4) The agency shall develop and publish specific plans and projects for achieving the objectives established in the AIP.

[(c) A health systems agency shall implement its HSP and AIP, and in implementig the plans it shall perform at least the following functions:

[(1) The agency shall seek, to the extent practicable, to implement its HSP and AIP with the assistance of individuals and public and private entities in its health service area.

[(2) The agency shall provide, in accordance with the priorities established in the AIP, technical assistance in obtaining and filling out the necessary forms and may provide other technical assistance to individuals and public and private entities for the development of projects and programs which the agency determines are necessary to achieve the health systems described in the HSP, including assistance in meeting the requirements of the agency prescribed under section 1532(b).

[(3) The agency shall, in accordance with the priorities established in the AIP, make grants to public and nonprofit private entities and enter into contracts with individuals and public and nonprofit entities to assist them in planning and developing projects and programs which the agency determines are necessary for the achievement of the health systems described in the HSP. Such grants and contracts shall be made

from the Area Health Services Development Fund of the agency established with funds provided under grants made under section 1640. No grants or contract under this subsection may be used (A) to pay the costs incurred by an entity or individual in the delivery of health services (as defined in regulations of the Secretary), or (B) for the cost of construction or modernization of medical facilities. No single grant or contract made or entered into under this paragraph shall be available for obligation beyond the one year period beginning on the date the grant or contract was made or entered into unless another grant or contract is made or entered into, in which case the funds under the first grant or contract shall remain available for the period of the second grant or contract. Funds from a first grant or contract which remain available for obligation in the period of a secnd grant or contract shall not be considered in determining the amount of the second grant or contract. If a individual or entity receives a grant or contract under this paragraph for a period or program, such individual or entity may receive only one more such grant or contract for such project or program.

[(d)(1) Each health systems agency shall coordinate its activities with—

[(A) each Professional Standards Review Organization (designated under section 1152 of the Social Security Act),

[(B) entities referred to in paragraph (1) and (2) of section 204(a) of the Demonstration Cities and Metropolitan Development Act of 1966 and regional and local entities the views of which are required to be considered under regulations prescribed under section 403 of the Intergovernmental Cooperation Act of 1968 to carry out section 401(b) of such Act,

[(C) other appropriate general or special purpose regional planning or administrative agencies (including area agencies on aging and local and regional alcohol abuse, drug abuse, and mental health planning agencies),

[(D) any entity of the State in which the agency is located which reviews the rates or budgets of health care facilities located in the agency's health service area, and

[(E) any other appropriate entity,

in the health systems agency's health service area. The agency shall, as appropriate, secure data from them for use in agency's planning and development activities, enter into agreements with them which will assure that actions taken by such entities which alter the area's health systems will be taken in a manner which is consistent with the HSP and the AIP in effect for the area, and, to the extent practicable, provide technical assistance to such entities.

[(2) Each health systems agency which has all or part of its health service area within a part of a standard metropolitan statistical area (as determined by the Office of Management and Budget) shall coordinate its activities with the activities of any other health systems agency which has any part of its health service area within such standard metropolitan statistical area. Such coordination shall at least provide that each health systems agency designated for a health service area within any part of a single standard metropolitan statistical area shall review (A) each HSP and AIP

for each such health service area, (B) the criteria used in accordance with section 1532 for reviews affecting any such area, and (C) each decision under certificate of need programs which affect any such area.

[(3) The Secretary shall by regulation provide for the sharing by health systems agencies of health planning data with Indian tribes and Alaska Native Villages.

[(4) Health systems agencies that have an Indian tribe or intertribal Indian organization (referred to in subsection (e)(1)(B)) located within such agencies' health service areas shall carry out their functions under this section in a manner that recognizes tribal self-determination. Such agencies shall seek to enter into agreements with the Indian tribes and intertribal organizations located within their health service areas on matters of mutual concern as defined in regulations of the Secretary.

[(e)(1)(A) Except as provided in subparagraph (B), each health systems agency review and approve or disapprove or disapprove each proposed use within its health service area of Federal funds—

[(i) appropriated under this Act for grants, contracts, loans, or loan guarantees for the development, expansion, or support of health resources by any entity other than the government of a State unless such resources are solely within the health service area of such agency; or

[(ii) made available by the State in which the health service area is located (from an allotment, contract, or grant to the State under an Act referred to in clause (i) for grants or contracts for the development, expansion, or support of health resources.

[(B) A health systems agency shall not review and approve or disapprove the proposed use within its health service area of Federal funds appropriated for grants or contracts for research or training unless the grants or contracts are to be made, entered into, or used for the development, expansion, or support of health resources which, in the case of grants or contracts for training, would make a significant change in the health services available in the health service area or which, in the case of grants or contracts for research, would significantly change the delivery of health services, or the distribution or extent of health resources, available to persons in the health service area other than those who are participants in such research. In the case of a proposed use within the health service area of a health systems agency of Federal funds described in subparagraph (A) by an Indian tribe (as defined in section (b) of the Indian Self-Determination and Education Assistance Act) or intertribal Indian organization for any program or project which will be located within or will specifically serve—

[(i) a federally recognized Indian reservation,

[(ii) any land area in Oklahoma which is held in trust by the United States for Indians or which is a restricted Indian-owned land area, or

[(iii) a Native village in Alaska (as defined in section 3(c) of the Alaska Native Claims Settlement Act),

a health systems agency shall only review and comment on such proposed use.

[(2) Notwithstanding any other provision of this Act or any other Act referred to in paragraph (1), the Secretary shall allow a health systems agency sixty days to make the review required by paragraph (1)(A)(i). If under paragraph (1)(A)(i) an agency disapproves a proposed use in its health service area of Federal funds described in paragraph (1), the Secretary may not make such Federal funds available for such use until he has made, upon request of the entity making such proposal, a review of the agency decision. In making any such review of any agency decision, the Secretary shall give the appropriate State health planning and development agency an opportunity to consider the decision of the health systems agency and to submit to the Secretary its comments on the decision. The Secretary, after taking into consideration such State agency's comments (if any), may make such Federal funds avaiable for such use, notwithstanding the disapproved of the health systems agency. Each such decision by the Secretary to make funds available shall be submitted to the appropriate health systems agency and State health planning and development agency and shall contain a detailed statement of the reasons for the decision.

[(3) The Governor of a State shall allow health systems agencies sixty days to make the review required by paragraph (1)(A)(ii). If under such paragraph an agency disapproves a proposed use of Federal funds in its health service area, the Governor may not make such Federal funds available for such use until he has made, upon request of the entity making such proposal, a review of the agency decision. In making any such review of any agency decision, the Governor shall give the State health planning and development agency an opportunity to consider the decision of the health systems agency and to submit to the Governor its comments on the decision. The Governor, after taking into considerations such State Agency's comments (if any), may make such Federal funds available for such use, notwithstanding the disapproval of the health systems agency. Each such decision by the Governor to make funds available shall be submitted to the appropriate health systems agency and State health planning and development agency and shall contain a detailed statement of the reasons for the decision

[(4) Each health systems agency shall provide each Indian tribe or intertribal Indian organization which is located within the agency's health service area information respecting the availability of the Federal funds described in the first sentence of this subsection.

[(f) To assist State health planning and development agencies in carrying out their functions under paragraphs (4) and (5) of section 1523(a) each health systems agency shall review and make recommendations to the appropriate State health planning and development agency respecting the need for new institutional health services proposed to be offered or developed in the health service area of such health systems agency.

[(g)(1) Except as provided in paragraph (2), each health systems agency shall review on a periodic basis (but at least every five years) at least those institutional and home health services which are offered in the health service area of the agency and with respect to which goals have been established in the State health plan and shall make recommendations to the State health planning and development agency designated under section 1521 for each State

in which the health systems agency's health service area is located respecting the appropriateness in the area of such services.

[(2) A health systems agency shall complete its initial review of health services within three years after the date of the agency's designation under section 1515(c).

[(3) In making the appropriateness review required by paragraph (1) of a health service, each health systems agency shall at least consider the need for the service, its accessibility and availability, financed viability, cost effectiveness, and the quality of service provided.

[(h) Each health systems agency shall collect annually on a form developed in consultation with the State health planning and development agency (or agencies) the rates charged for each of the twenty-five most frequently used hospital services in the State (or States) including the average semiprivate and private room rates.

[(2) Each health systems agency shall make available to the public for inspection and copying (at a reasonable expense to the public) the information supplied to the health systems agency pursuant to this subsection in readily understandable language and in a manner designed to facilitate comparisons among the hospitals in the health systems agency's health service area.

[ASSISTANCE TO ENTITIES DESIRING TO BE DESIGNATED AS HEALTH SYSTEMS AGENCIES

[SEC. 1514. The Secretary shall provide all necessary technical and other nonfinancial assistance (including the preparation of prototype plans of organization and operation) to public or nonprofit private entities which—

[(1) express a desire to be designated as health systems agencies, and

[(2) the Secretary determines have a potential to meet the requirements of a health systems agency specified in sections 1512 and 1513,

to assist such entities in developing applications to be submitted to the Secretary under section 1515 and otherwise in preparing to meet the requirements of this part for designation as a health systems agency.

[DESIGNATION OF HEALTH SYSTEMS AGENCIES

[SEC. 1515. (a) At the earliest practicable date after the establishment under section 1511 of health service areas (but not later than eighteen months after the date of enactment of this title) the Secretary shall enter into agreements in accordance with this section for the designation of health systems agencies for such areas.

[(b)(1) The Secretary may enter into agreements with entities under which the entities would be designated as the health systems agencies for health service areas on a conditional basis with a view to determining their ability to meet the requirements of section 1512(b), and their capacity to preform the functions prescribed by section 1513.

[(2) During any period of conditional designation (which, except as otherwise provided in this paragraph, may not exceed 24 months), the Secretary may require that the entity conditionally

designated meet only such of the requirements of section 1512(b) and perform only such of the functions prescribed by section 1513 as he determines such entity to be capable of meeting and performing. The Secretary may, upon application of a conditionally designated entity, extend for an additional period of not to exceed 12 months the period of such entity's conditional designation if the Secretary determines that (A) unusual circumstances exist or existed which prevent such entity from qualifying for designation under subsection (c) within 24 months of such entity's conditional designation under this subsection, (B) such extension should enable such entity to qualify for designation under subsection (c), and (C) such extension is necessary to carry out the purposes of this title. Each such determination shall be in writing and shall include a summary of the reasons for it. The number and type of such requirements and functions shall, during the period of conditional designation, be progressively increased as the entity conditionally designated becomes capable of added responsibility so that, by the end of such period, the agency may be considered for designation under subsection (c).

[(3) Any agreement under which an entity is conditionally designated as a health systems agency may be terminated by such entity upon ninety days notice to the Secretary or by the Secretary upon ninety days notice to such entity.

[(4) The Secretary may not enter into an agreement with any entity under paragraph (1) for conditional designation as a health systems agency for a health service area until—

[(A) the entity has submitted an application for such designation which contains assurances satisfactory to the Secretary that upon completion of the period of conditional designation the applicant will be organized and operated in the manner described in section 1512(b) and will be qualified to perform the functions prescribed by section 1513;

[(B) a plan for the orderly assumption and implementation of the functions of a health systems agency has been received from the applicant and approved by the Secretary; and

[(C) the Secretary has consulted with the Governor of each State in which such health service area is located and with such other State and local officials as he may deem appropriate, with respect to such designation.

In considering such applications, the Secretary shall give priority to any applications which has been recommended by a Gorvernor or a Statewide Health Coordinating Council for approval. When the Secretary enters into an agreement with an entity under paragraph (1), the Secretary shall notify the Governor of the State in which such entity is located of such agreement.

[(c)(1)(A) The Secretary shall enter into an agreement with an entity for its designation as a health systems agency if, on the basis of an application under paragraph (2) (and, in the case of an entity conditionally designated, on the basis of its performance during a period of conditional designation under subsection (b) as a health systems agency for a health service area), the Secretary determines that such entity is capable of fulfilling, in a satisfactory manner, the requirements and functions of a health systems agency. Any such agreement under this subsection with an entity may be re-

newed in accordance with paragraph (3), shall contain such provisions respecting the requirements of sections 1512(b) and 1513 and such conditions designed to carry out the purpose of this title as the Secretary may prescribe, and shall be for a term of not to exceed thirty-six months; except that, prior to the expiration of such term, such agreement may be terminated—

[(i) by the entity at such time and upon such notice to the Secretary a he may by regulation prescribe, or

[(ii) by the Secretary if the Secretary determines, in accordance with subparagraph (B), that the entity is not complying with the provisions of such agreement.

A designation agreement under this subsection may be terminated by the Secretary before the expiration of its term if the health service area with respect to which the agreement was entered into is revised under section 1511(b)(4) and the Secretary determines, after consultation with the Governor and Statewide Health Coordinating Council of each State in which the health service area (as revised) is located, that the health systems agency designated under such agreement cannot effectively carry out the agreement for the area (as revised). In terminating an agreement under the preceding sentence, the Secretary may provide that the termination not take effect before an agreement for the designation of a new agency takes effect and shall provide the agency designated under the agreement to be terminated an opportunity to terminate its affairs in a satisfactory manner.

[(B) Before the Secretary may terminate, under subparagraph (A)(ii), an agreement with an entity for designation as the health systems agency for a health service area, the Secretary shall—

[(i) consult with the Governor and the Statewide Health Coordinating Council of each State in which is located the health service area respecting the proposed termination,

[(ii) give the entity notice of the intention to terminate the agreement and in the notice specify with particularity (I) the basis for the determination of the Secretary that the entity is not in compliance with the agreement, and (II) the actions that the entity should take to come into compliance with the agreement, and

[(iii) provide the entity with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the matter specified in the notice.

The Secretary may not terminate such an agreement before consulting with the National Council on Health Planning and Development respecting the proposed termination. Before the Secretary may permit the term of an agreement to expire without renewing the agreement, the Secretary shall make the consultations prescribed by clause (i) and the preceding sentence, give the entity with which the agreement was made notice of the intention not to renew the agreement and the reasons for not renewing the agreement, and provide, as prescribed by clause (iii), the entity an opportunity for a hearing on the matter specified in the notice.

[(2) The Secretary may not enter into an agreement with any entity under paragraph (1) for designation as a health systems agency for a health service area unless the entity has submitted an

application to the Secretary for designation as a health systems agency, and the Governor of each State in which the area is located has been consulted respecting such designation of such entity. Such an application shall contain assurances satisfactory to the Secretary that the applicant meets the requirements of section 1512(b) and is qualified to perform or is performing the functions prescribed by section 1513. In considering such applications, the Secretary shall give priority to any application which has been recommended by a Governor or a Statewide Health Coordinating Council for approval.

[(3)(A) An agreement under this subsection for the designation of a health systems agency may be renewed by the Secretary for a period not to exceed thirty-six months if upon review (as provided in section 1535) of the agency's operation and performance of its functions, he determines that it has fulfilled, in a satisfactory manner, the functions of a health systems agency prescribed by section 1513 during the period of the agreement to be renewed and continues to meet the requirements of section 1512(b).

[(B) If upon a review under section 1535 of the agency's operation and performance of its functions the Secretary determines that it has not fulfilled, in a satisfactory manner, the functions of a health systems agency prescribed by section 1513 during the period of the agreement to be renewed or does not continue to meet the requirements of section 1512(b), he may terminate such agreement or return such agency to a conditionally designated status under subsection (b) for a period not to exceed twelve months. At the end of such period, the Secretary shall either terminate the agreement with such agency or enter into an agreement with such agency under paragraph (1). The Secretary may not terminate an agreement or return an agency to a conditionally designated status unless the Secretary has—

[(i) provided the agency with notice of his intent to return it to a conditional status or terminate the agreement with the agency and included in that notice specification of any functions which the Secretary has determined the agency did not satisfactorily fulfill and of any requirements which the Secretary has determined the agency has not met;

[(ii) provided the agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the action proposed to be taken by the Secretary; and

[(iii) in the case of a proposed termination of an agreement, consulted with the National Council on Health Planning and Development respecting the termination.

[(4) Before renewing an agreement with a health systems agency under this subsection, the Secretary shall provide the State health planning and development agency of the State in which the health systems agency is located an opportunity to comment on the performance of such agency and to provide a recommendation on whether such agreement should be renewed and whether the agency should be returned to a conditional status as authorized by paragraph (3).

[(5) If the Secretary enters into an agreement under this subsection with an entity or renews such as agreement, the Secretary

shall notify the Governor of the State in which such entity is located of the agreement, and any renewal of the agreement.

[(d) If a designation agreement under subsection (b) or (c) of a health systems agency for a health service area is terminated before the date prescribed for its expiration or is not renewed, the Secretary shall, upon application and in accordance with subsection (b) or (c) (as the Secretary determines appropriate), enter into a designation agreement with another entity to be the health systems agency for such area.

[PLANNING GRANTS

[SEC. 1516. (a) The Secretary shall make in each fiscal year a grant to each health system agency with which there is in effect a designation agreement under subsection (b) or (c) of section 1515. A grant under this subsection shall be made on such conditions (including submission of the health systems agency's budget) as the Secretary determines is appropriate, shall be used by a health systems agency for compensation of agency personnel, collection of data, planning, and the performance of the functions of the agency. Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, except that (1) no funds under any grant to an agency may be obligated in any period in which a designation agreement is not in effect for such agency, and (2) notwithstanding clause (1), a grant made to a conditionally designated entity with which the Secretary will not enter into a designation agreement under section 1515(c) shall be available for obligation for such additional period as the Secretary determines such entity will require to satisfactory terminate its activities under the agreement for its conditional designation. A health systems agency may use funds under a grant under this subsection to make payments under contracts with other entities to assist the health systems agency in the performance of its functions; but it shall not use funds under such a grant to make payments under a grant or contract with another entity for the development or delivery of health services or resources.

[(b) The amount of any grant under subsection (a) to a health systems agency designated under section 1515(b) shall be determined by the Secretary.

[(c)(1) Except as provided in paragraph (2), the amount of a grant under subsection (a) to a health systems agency designated under section 1515(c) shall be the greater of the amount determined under subparagraph (A), (B), or (C) as follows:

[(A) The amount of a grant to a health systems agency shall be the lesser of—

[(i) the product of $0.60 and the population of the health service area for which the agency is designated, or

[(ii) $3,750,000.

[(B)(i) If the application of the health systems agency for such grant states that the agency, in its latest fiscal year ending before the period in which such grant will be available for obligation, collected non-Federal funds meeting the require-

ments of clause (ii) for the purposes for which such grant may be made, the amount of such grant shall be the sum of—

[(I) the amount determined under subparagraph (A) or (C), whichever is applicable, and

[(II) the lesser of the amount of such non-Federal funds or $200,000 or the product of $0.25 and the population of the health service area for which the agency is designated, whichever is greater.

[(ii) The non-Federal funds which an agency may use for the purpose of obtaining a grant under subsection (a) which is computed on the basis of the formula prescribed by clause (i) shall be funds which are not paid to the agency for the performance of particular services by it and which are otherwise contributed to the agency without conditions as to their use other than the condition that the funds shall be used for the purposes for which a grant made under this section may be used.

[(C) The amount of a grant to a health systems agency may not be less than—

[(i) in the case of a grant made in the fiscal year ending September 30, 1979, $175,000 and, to the extend appropriations are specifically made after October 1, 1979, to provide the additional amount authorized by this clause, an amount which bears the same ratio to $50,000 as the number of days beginning in the period beginning on October 1, 1979, and ending on the date of the period for which the grant was made bears to 365,

[(ii) $225,000 in the case of a grant made in the fiscal year ending September 30, 1980,

[(iii) $245,000 in the case of a grant made in the fiscal year ending September 30, 1981, and

[(iv) $100,000 in the case of a grant made in any succeeding fiscal year.

[(2) If the Secretary determines, after review of the budget of a health system agency and after consultation with the State health planning and development agency of the State in which such agency is located, that the amount of a grant which is to be made to the agency in accordance with paragraph (1) is in excess of the amount needed by the agency to adequately perform its functions under its designation agreement, the amount of the grant to the agency shall be such amount as the Secretary determines the agency needs for the performance of such functions.

[(d)(1) For the purpose of making payments pursuant to grants made under subsection (a), there are authorized to be appropriated $460,000,000 for the fiscal year ending June 30, 1975, $90,000,000 for the fiscal year ending June 30, 1976, $125,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1980, and $165,000,000 for the fiscal year ending September 30, 1981.

[(2) Of the amount appropriated under paragraph (1) for any fiscal year, the Secretary may use not more than 5 per centum of such amount to increase the amount of grants in such fiscal year to health systems agencies under subsection (a) to assist the agencies meeting extraordinary expenses (including extraordinary expenses resulting from an agency's health service area being located in

more than one State or from an agency serving a large rural or urban medically underserved population or a geographically large health service area) which would not be covered under the amount or a grant that would be available to an agency under subsection (c) and in improving their performance as a result of the development and implementation of innovative health planning techniques.

[(3) Notwithstanding subsection (c)(1), if the total of the amounts appropriated under paragraph (1) for any fiscal year (reduced by the amount to be retained by the Secretary for use under paragraph (2) is less than the amount required to make grants to each health systems agency designated under section 1515(c) in the amount prescribed for such agency by subsection (c)(1), the Secretary shall make a pro rata reduction in the amount of the grant to each such agency as follows:

[(A) The Secretary shall compute the amount of the grant each such agency would be entitled to receive under such subsection if the dollar limit prescribed by subparagraph (A)(ii) of such subsection did not apply.

[(B) The Secretary shall reduce on a pro rata basis the amount of the grant to each such agency computed under subparagraph (A) of this paragraph so that the total amount of such grants equals the total of the amounts appropriated for such fiscal year (as so reduced), except that—

[(i) the amount of the grant to any such agency may not exceed $3,750,000,

[(ii) to the extent of available appropriations, no such agency shall receive a grant in an amount less than the amount prescribed by subparagraph (c) of subsection (c)(1) for such fiscal year, and

[(iii) if the total of the appropriations for the fiscal year ending September 30, 1982, for such grants—

[(I) is equal to or greater than the total of the appropriations for such grants for the preceding fiscal year, no such agency shall receive a grant in an amount less than the amount of the grant it received in such preceding fiscal year unless the population of the area for which it is designated has decreased, unless the level of non-Federal funds on which its grant is computed had decreased, or unless the amount available for its grant is decreased because of an increase in the minimum grant prescribed by subsection (c)(1)(C), or

[(II) is less than the total of the appropriations for such grants for the preceding fiscal year, no such agency shall receive a grant in an amount greater than the amount of the grant it received in such preceding fiscal year unless the population of the area for which it is designated has increased, unless the level of non-Federal funds on which its grant is computed has increased, or unless the amount of its grant is increased under subsection (c)(1)(C).

[PART C—STATE HEALTH PLANNING AND DEVELOPMENT

[DESIGNATION OF STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

[SEC. 1521. (a) For the purpose of the performance within each State of the health planning and development functions prescribed by section 1523, the Secretary shall enter into and renew agreements (described in subsection (b)) for the designation of a State health planning and development agency for each State.

[(b)(1) A designation agreement under subsection (a) is an agreement with the Governor of a State for the designation of an agency (selected by the Governor) of the government of that State as the State health planning and development agency (hereinafter in this title referred to as the "State Agency") to administer the State administrative program prescribed by section 1522 and to carry out the State's health planning and development functions prescribed by section 1523. The Secretary may not enter into such an agreement with the Governor of a State unless—

[(A) there has been submitted by the State a State administrative program which has been approved by the Secretary,

[(B) an application has been made to the Secretary for such an agreement and the application contains assurances satisfactory to the Secretary that the agency selected by the Governor for designation as the State Agency has the authority and resources to administer the State administrative program of the State and to carry out the health planning and development functions prescribed by section 1523, and

[(C) in the case of an agreement entered into under paragraph (3), there has been established for the State a Statewide Health Coordinating Council meeting the requirements of section 1524.

[(2)(A) The agreement entered into with a Governor of a State under subsection (a) may provide for the designation of a State Agency on a conditional basis with a view to determining the capacity of the designated State Agency to administer the State administrative program of the State and to carry out the health planning and development functions presribed by section 1523. The Secretary shall require as a condition to the entering into of such an agreement that the Governor submit on behalf of the agency to be designated a plan for the agency's orderly assumption and implementation of such functions.

[(B) The period of an agreement described in subparagraph (A) shall not extend beyond the period set forth in subsection (d)(1)(3). During such period the Secretary may require that the designated State Agency perform only such of the functions of a State Agency prescribed by section 1523 as he determines it is capable of performing. The number and type of such functions shall, during such period, be progressively increased as the designated State Agency becomes capable of added responsibility, so that by the end of such period the designated State Agency may be considered for designation under paragraph (3).

[(C) Any agreement with a Governor of a State entered into under subparagraph (A) may be terminated by the Governor upon

ninety days' notice to the Secretary or by the Secretary upon ninety days' notice to the Governor.

[(3)(A) If, on the basis of an application for designation as a State Agency (and, in the case of an agency conditionally designated under paragraph (2), on the basis of its performance under an agreement with a Governor of a State entered into under such paragraph), the Secretary determines that the agency is capable of fulfilling, in a satisfactory manner, the responsibilities of a State Agency, he shall enter into an agreement with the Governor of the State designating the agency as the State Agency for the State. No such agreement may be made unless an application therefor is submitted to, and approved by, the Secretary. Any such agreement shall be for a term of not to exceed thirty-six months, except that, prior to the expiration of such term, such agreement may be terminated—

[(i) by the Governor at such time and upon such notice to the Secretary as he may by regulation prescribe, or

[(ii) by the Secretary if the Secretary determines, in accordance with subparagraph (B), that the designated State Agency is not complying with the provisions of such agreement.

An agreement under this paragraph shall contain such provisions as the Secretary may require to assure that the requirements of this part respecting State Agencies are complied with.

[(B) Before the Secretary may terminate an agreement with a designated State Agency under subpargraph (A)(ii), the Secretary shall—

[(i) consult with the Statewide Health Coordinating Council of the State for which the State Agency is designated respecting the proposed termination,

[(ii) give the State Agency notice of the intention to terminate the agreement and in the notice specify with particularity (I) the basis for the determination of the Secretary that the State Agency is not in compliance with the agreement, and (II) the actions that the State Agency should take to come into compliance with the agreement, and

[(iii) provide the State Agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the matter specified in the notice.

The Secretary may not terminate such an agreement before consulting with the National Council on Health Planning and Development respecting the proposed termination. Before the Secretary may permit the term of an agreement to expire without renewing the agreement, the Secretary shall make the consultations prescribed by clause (i) and the preceding sentence, give the State Agency with which the agreement was made notice of the intention not to renew the agreement and the reasons for not renewing the agreement, and provide, as prescribed by clause (iii), the State Agency an opportunity for a hearing on the matter specified in the notice.

[(4)(A) An agreement entered into under paragraph (3) for the designation of a State Agency may be renewed by the Secretary for a period not to exceed thirty-six months if upon a review under section 1535 of the State Agency's operation and performance of its

function he determines that it has fulfilled, in a satisfactory manner, the responsibilities of a State Agency during the period of the agreement to be renewed and if the applicable State administrative program continues to meet the requirements of section 1522. Before renewing an agreement under this paragraph with a State Agency for a State, the Secretary shall provide each health systems agency designated for a health service area located (in whole or in part) in such State and the Statewide Health Coordinating Council of such State an opportunity to comment on the performance of the State Agency and to provide a recommendation on whether such agreement should be renewed.

[(B) If upon a review under section 1535 of the State Agency's operation and performance of its functions, the Secretary determines that it has not fulfilled, in a satisfactory manner, the responsibilities of a State Agency during the period of the agreement to be renewed or if the applicable State administrative program does not continue to meet the requirements of section 1522, he may terminate such agreement or return the State Agency to a conditionally designated status under paragraph (2) of subsection (b) for a period not to exceed twelve months. At the end of such period, the Secretary shall either terminate its agreement with such State Agency or enter into an agreement with such State Agency under paragraph (3) of subsection (b). The Secretary may not terminate an agreement or return a State Agency to a conditionally designated status unless the Secretary has—

[(i) provided the State Agency with notice of his intent to return it to a conditional status or terminate the agreement with it and included in that notice specification of any functions which the Secretary has determined the State Agency did not satisfactorily fulfill and of any requirements which the Secretary has determined it has not met;

[(ii) provided the State Agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the action proposed to be taken by the Secretary; and

[(iii) in the case of a proposed termination, consulted with the National Council on Health Planning and Development respecting the termination.

[(c) If a designation agreement with the Governor of a State entered into under subsection (b)(2) or (b)(3) is terminated before the date prescribed for its expiration, the Secretary shall, upon application and in accordance with subsection (b)(2) or (b)(3) (as the Secretary determines appropriate), enter into another agreement with the Governor for the designation of a State Agency.

[(d)(1) If an agreement under subsection (b)(3) for the designation of a State Agency for a State is not in effect upon the expiration of—

[(A) the fourth fiscal year which begins begins after the calendar year in which the National Health Planning and Resources Development Act of 1974 is enacted; or

[(B)(i) if the legislature of the State is in a regular session on the date of the enactment of the Health Programs Extension Act of 1980 and the legislature will be in session for at

least twelve months from such date, twenty-four months from such date, or

[(ii) if the legislature of the State is in session on such date of enactment but twelve months do not remain in such session after such date or if the legislature of the State is not in session on such date, twenty-four months after the beginning of the first regular session of the legislature beginning after such date,

whichever occurs later, the Secretary shall take the action prescribed by paragraph (2).

[(2) If upon the expiration of the period applicable under paragraph (1) an agreement is not in effect for the designation of a State Agency for a State, the Secretary shall until such an agreement is in effect take the following action:

[(A) During the first twelve months after the date of the expiration of the applicable period, the Secretary shall reduce by 25 percent the amount of each allotment, grant, loan, and loan guarantee made to and each contract entered into with an individual or entity in such State during such period under this Act or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970.

[(B) During the second twelve months after such expiration date, the Secretary shall reduce by 50 percent the amount of each such allotment, grant, loan, loan guarantee, and contract.

[(C) During the third twelve months after such expiration date, the Secretary shall reduce by 75 percent the amount of each such allotment, grant, loan, loan guarantee, and contract.

[(D) After the expiration of thirty-six months after such expiration date, the Secretary may not make or enter into any such allotment, grant, loan, loan guarantee, or contract.

[STATE ADMINISTRATIVE PROGRAM

[SEC. 1522. (a) A State administrative program (hereinafter in this section referred to as the "State Program") is a program for the performance within the State by its State Agency of the functions prescribed by section 1523. The Secretary may not approve a State Program for a State unless it—

[(1) meets the requirements of subsection (b);

[(2) has been submitted to the Secretary by the Governor of the State at such time and in such detail, and contains or is accompanied by such information, as the Secretary deems necessary; and

[(3) has been submitted to the Secretary only after the Governor of the State has afforded to the general public of the State a reasonable opportunity for a presentation of views on the State Program.

[(b) The State Program of a State must—

[(1) provide for the performance within the State (after the designation of a State Agency and in accordance with the designation of a State Agency and in accordance with the designation agreement) of the functions prescribed by section 1523 and specify the State Agency of the State as the sole agency for the performance of such functions (except as provided in subsec-

tion (b) of such section) and for the administration of the State Program;

[(2) contain or be supported by satisfactory evidence that the State Agency has under State law the authority to carry out such functions and the State Program in accordance with this part and contain a current budget for the operation of the State Agency;

[(3) provide for adequate consultation with, and authority for, the Statewide Heatlh Coordinating Council (prescribed by section 1524, in carrying out such functions and the State Program;

[(4)(A) set forth in such detail as the Secretary may prescribe the qualifications for personnel having responsibilities in the performance of such functions and the State Program, and require the State Agency to have a professional staff for planning and a professional staff for development, which staffs shall be of such size and meet such qualifications as the Secretary may prescribe;

[(B) provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient administration of such functions and the State Program, including methods relating to the establishment and maintenance of personnel standards on a merit basis consistent with such standards as are or may be established by the Civil Service Commission under section 208(a) of the Intergovernmental Personnel Act of 1970 (Public Law 91-648), but the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with the methods relating to personnel standards on a merit basis established and maintained in conformity with this paragraph;

[(5) require the State Agency to perform its functions in acordance with procedures and criteria established and published by it, which procedures and criteria shall conform to the requirements of section 1532 and contain provisions to assure compliance with requests for information made by health systems agencies in accordance with section 1513(h);

[(6) require the State Agency to (A) hold in public meetings to conduct the business of the State Agency (other than any part of a meeting in which it is likely, as determined by the State Agency, that information respecting the performance or remuneration of an employee of the agency will be disclosed and such a disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee or that information relating to the agency's participation in a judicial proceeding will be disclosed), (B) give adequate notice to the public of such meetings, and (C) make records and data of the agency (other than records or data respecting the performance or remuneration of an employee the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of the employee and records or data of the agency relating to its participation in a judicial proceeding) available, upon request, to the public;

[(7)(A) provide for the coordination (in accordance with regulations of the Secretary) with the cooperative system provided for under section 306(e) of the activities of the State Agency for the collection, retrieval, analysis, reporting, and publication of statistical and other information related to health and health care and for the coordination by the State Agency in the conduct of its activities with any entity of the State which reviews the rates or budgets of health care facilities in the State, (B) require providers of health care doing business in the State to make statistical and other reports of such information to the State Agency, and (C) provide for consultation and coordination (in accordance with regulations of the Secretary) between the State Agency, the Statewide Health Coordinating Council, the State mental health authority, and other agencies of the State government designated by the Governor;

[(8) provide, in accordance with methods and procedures prescribed or approved by the Secretary, for the evaluation, at least annually, of the performance by the State Agency of its functions and of their economic effectiveness;

[(9) provide that the State Agency will from time to time, and in any event not less often than annually, review the State Program and submit to the Secretary required modifications;

[(10) require the State Agency to (A) assemble and report to the Secretary data (other than data which is regularly collected by an entity of the Department of Health, Education, and Welfare under a provision of law other than this title) which the Secretary may require to carry out his responsibilities under section 1501(e), including data on the personnel, facilities, and other resources needed to meet the goals set forth in the State health plan, and (B) make such reports, in such form and containing such information, concerning its structure, operations, performance of functions, and other matters as the Secretary may from time to time require, and keep such records and afford such access thereto as the Secretary may find necessary to verify such reports;

[(11) require the State Agency to provide for such fiscal control and fund accounting procedures as the Secretary may require to assure proper disbursement of, and accounting for, amounts received from the Secretary under this title;

[(12) permit the Secretary and the Comptroller General of the United States, or their representatiaves, to have access for the purpose of audit and examination to any books, documents, papers, and records of the State Agency pertinent to the disposition of amounts received from the Secretary under this title; and

[(13) provide that if the State Agency makes a decision in the performance of a function under paragraph (4), (5), or (6) of section 1523(a) or under title XVI which is inconsistent with a recommendation made under subsection (f) or (g) of section 1513 by a health systems agency within the State—

[(A) such decision (and the record upon which it was made) shall, upon request of the health systems agency, be reviewed in a timely manner, under an appeals mechanism consistent with State law governing the practices and

procedures of administrative agencies or, if there is no such State law, by an agency of the State (other than the State health planning and development agency) designated by the Governor, and

[(B) the decision of the reviewing agency under subparagraph (A) shall for purposes of this title and title XVI be considered the decision of the State health planning and development agency.

[(c) The Secretary shall approve any State Program and any modification thereof which complies with subsections (a) and (b). The Secretary shall review for compliance with the requirements of this part the specifications of and operations under each State Program approved by him. Such review shall be conducted not less often than once every three years.

[STATE HEALTH PLANNING AND DEVELOPMENT FUNCTIONS

[SEC. 1523. (a) Each State Agency of a State designated under section 1521(b)(3) shall, except as authorized under subsection (b), perform within the State the following functions:

[(1)(A) Conduct the health planning activities of the State and implement those parts of the State health plan (except as provided under section 1524(c)(2)(E)) and the plans of the health systems agencies within the State which relate to the government of the State, and (B) determine the statewide health needs of the State after providing reasonable opportunity for the submission of written recommendations respecting such needs by the State health authority, the State mental health authority, and other agencies of the State government, designated by the Governor for the purpose of making such recommendations, and after consulting with the Statewide Health Coordinating Council.

[(2) Prepare, review at least triennially, and revise as necessary a preliminary State health plan which shall be made up of the HSP's of the health systems agencies within the State. In carrying out its functions under this paragraph, the State Agency shall refer the HSP's to the State health authority, the State mental health authority, and other agencies of the State government (designated by the Governor to make the review prescribed by this sentence) to review the goals and related resource requirements of the HSP's and to make written recommendations to the State Agency respecting such goals and requirements. Such preliminary plan may, as found necessary by the State Agency, contain such revisions of such HSP's to achieve their appropriate coordination or to deal more effectively with statewide health needs determined under paragraph (1)(B). Such preliminary plan shall be submitted to the Statewide Health Coordinating Council of the State for approval or disapproval and for use in developing the State health plan referred to in section 1524(c).

[(3) Assist the Statewide Health Coordinating Council of the State in the performance of its functions generally.

[(4)(A) Serve as the designated planning agency of the State for the purposes of section 1122 of the Social Security Act if

the State has made an agreement pursuant to such section, and (B) administer a State certificate of need program which applies to the obligation of capital expenditures within the State and the offering within the State of new institutional health services and the acquisition of major medical equipment and which is consistent with standards established by the Secretary by regulation. A certificate of need program shall provide for procedures and penalties to enforce the requirements of the program. In performing its functions under this paragraph the State Agency shall consider recommendations made by health systems agencies under section 1513(f).

[(5) After consideration of recommendations submitted by health systems agencies under section 1513(f) respecting new institutional health services proposed to be offered within the State, make findings as to the need for such services.

[(6) Review on a periodic basis (but not less often than every five years) at least those institutional and home health services which are offered in the State and with respect to which goals have been established in the State health plan and, after consideration of recommendations submitted by health systems agencies under section 1513(g) respecting the appropriateness of such services, make public its findings. In making the appropriateness review required by this paragraph of a health service, the State Agency shall at least consider the need for the service, its accessibility and availability, financial viability, cost effectiveness, and the quality of service provided.

[(7) Prepare an inventory of the health care facilities (other than Federal health care facilities) located in the State and evaluate on an ongoing basis the physical condition of such facilities. Such inventory and evaluations shall be reported to the health systems agencies designated for health service areas located (in whole or in part) in the State for purposes of the functions of the agency under section 1513(b).

[(8) Provide technical assistance to individuals and public and private entities in obtaining and filling out the necessary forms for the development of projects and programs.

If in determining the statewide health needs under paragraph (1)(B) or in preparing or revising a preliminary State health plan under paragraph (2) the State Agency does not take an action proposed in a recommendation submitted under the applicable paragraph, the State Agency shall when publishing such needs or health plan make available to the public a written statement of its reasons for not taking such action.

[(b)(1) Any function described in subsection (a) may be performed by another agency of the State government upon request of the Governor under an agreement with the State Agency satisfactory to the Secretary.

[(2) The requirement of paragraph (4)(B) of subsection (a) shall not apply to a State Agency of a State until the expiration of the first regular session of the legislature of such State which begins after the date of enactment of this title.

[(3) A State Agency shall complete its findings with respect to the appropriateness of any existing institutional health service within one year after the date a health systems agency has made

its recommendation under section 1513(g) with respect to the appropriateness of the service.

[(c) If a State Agency makes a decision in carrying our a function described in paragraph (4), (5), or (6) of subsection (a) which is not consistent with the goals of the applicable HSP or the priorities of the applicable AIP, the State Agency shall submit to the appropriate health systems agency a detailed statement of the reasons for the inconsistency.

[STATEWIDE HEALTH COORDINATING COUNCIL

[SEC. 1524. (a) A State health planning and development agency designated under section 1521 shall be advised by a Statewide Health Coordinating Council (hereinafter in this section referred to a the "SHCC") which (1) is organized in the manner described by subsection (b), and (2) performs the functions listed in subsection (c).

[(b)(1) A SHCC of a State shall be composed in the following manner:

[(A)(i) A SHCC shall have no fewer than sixteen representatives (or if the number of representatives on the SHCC to which health systems agencies are entitled under the second sentence of clause (iii) is less than sixteen, no fewer than the number to which they are entitled) appointed by the Governor of the State from lists of nominees submitted to the Governor by each of the health systems agencies designated for health service areas which fall, in whole or in part, within the State. Each agency shall submit a number of nominees to the Governor which is at least twice the number of representatives on the SHCC to which the agency is entitled.

[(ii) Each such health systems agency shall be entitled to the same number of representatives on the SHCC, except that the number of representatives on the SHCC to which a health systems agency designated for a health service area which is not enitrely within the State shall be a number which is based on the relationship of the population of the portion of such health service area within the State to the population of the largest health service area located entirely within the State, except that each such agency shall be entitled to at least one representative on the SHCC.

[(iii) Except as otherwise provided in clause (ii) and this clause, each such health systems agency shall be entitled to at least two representatives on the SHCC. If there are more than ten health systems agencies within a State, each health systems agency within such State shall be entitled to at least one representative on the SHCC. Of the representatives of health systems agencies on the SHCC, not less than one-half shall be individuals who are consumers of health care and who are not providers of health care.

[(B) In addition to the appointments made under subparagraph (A), the Governor of the State may appoint such persons (including State officials, public elected officials, and other representatives of governmental authorities within the State) to serve on the SHCC as he deems appropriate; except that (i) the

number of persons appointed to the SHCC under this subparagarph may not exceed 40 per centum of the total membership of the SHCC, and (ii) a majority of the persons appointed by the Govenor shall be consumers of health care who are not also providers of health care.

[(C) Not less than one-half of the providers of health care who are members of a SHCC shall be direct providers of health care (as described in section 1531(3)).

[(D) Where one or more hospitals or other health care facilities of the Veterans' Administration are located in a State, the SHCC shall, in addition to the appointed members, include, as a nonvoting, ex officio member, an individual whom the Chief Medical Director of the Veterans' Administration shall have designated as a representative of such facilities.

[(E) members of the SHCC who are consumers of health care and who are not providers of health care shall include individuals who represent rural and urban medically underserved populations if such populations exist in the State.

[(2) The Governor may select, by and with the advice and consent of the State senate, or, in the case of a State with a unicameral legislature, of the State legislature, the chairman of the SHCC from among the members of the SHCC. If the Governor does not select the chairman, the SHCC shall select the chairman from among its members.

[(3) The SHCC shall conduct all of its business meetings in public, and shall meet at least once in each calendar quarter of a year.

[(c) A SHCC shall perform the following functions:

[(1) Establish (in consultation with the health systems agencies in the State and the State Agency) a uniform format for HSP's and review and coordinate at least triennially the HSP and review at least annually the AIP of each health systems agency within the State and report to the Secretary, for purposes of his review under section 1535(c), its comments on such HSP and AIP.

[(2)(A) Prepare, review at least triennially, and revise as necessary a State health plan which shall be made up of the HSP's of the health systems agencies within the State. Such plan may, as found necessary by the SHCC, contain revisions of such HSP's to achieve their appropriate coordination or to deal more effectively with statewide health needs as determined by the State Agency of the State. The plan shall also describe the institutional health services (as defined in section 1531(5)) needed to provide for the well-being of persons receiving care within the State, including, at a minimum, acute inpatient (including psychiatric inpatient, obstetrical inpatient, and neonatal inpatient), rehabilitation, and long-term care services; and also describe other health services needed to provide for the well-being of persons receiving care within the State, including, at a minimum, preventive, ambulatory, and home health services and treatment for alcohol and drug abuse. The plan shall also describe the number and type of resources, including facilities, personnel, major medical equipment, and other resources required to meet the goals of the plan and

shall state the extent to which existing health care facilities are in need of modernization, conversion to other uses, or closure and the extent to which new health care facilities need to be constructed or acquired. Each health systems agency which participates in the SHCC shall make available to the SHCC its HSP for integration into the State health plan and shall, as required by the SHCC, revise its HSP to achieve appropriate coordination with the HSP's of the other agencies which participate in the SHCC or to deal more effectively with statewide health needs as determined by the State Agency of the State.

[(B) In the preparation and revision of the State health plan, the SHCC shall review and consider the preliminary State health plan submitted by the State Agency under section 1523(a)(2), and shall conduct a public hearing on the plan as proposed and shall give interested persons an opportunity to submit their views orally and in writing. Not less than thirty days prior to any such hearing, the SHCC shall publish in at least two newspapers of general circulation in the State a notice of its consideration of the proposed plan, the time and place of the hearing, the place at which interested persons may consult the plan in advance of the hearing, and the place and period during which to direct written comment to the SHCC on the plan. If in preparing or revising the State health plan the SHCC does not take an action proposed in a recommendation submitted under section 1523(a)(1)(B), the SHCC shall when publishing such plan make available to the public a written statement of its reasons for not taking such action.

[(C) The State health plan or any revised State health plan approved by the SHCC shall be the State health plan for the State for purposes of this title after it is approved by the Governor of the State. The State health plan for a State may be disapproved by the Governor of the State only if the Governor determines that the plan does not effectively meet the statewide health needs of the State as determined by the State Agency for the State. In disapproving a State health plan, a Governor shall make public a detailed statement of the basis for the determination that the plan does not meet such needs and shall specify the changes in the plan which the Governor determines are needed to meet such needs. Subparagraph (B) does not apply to the preparation of revisions of a State health plan disapproved by a Governor.

[(D) In carrying out its functions with respect to the goals and resource requirements for mental health services of the State health plan, the SHCC may establish a procedure under which persons (acting as or as part of an advisory group or subcommittee appointed by the SHCC) knowledgeable about mental health services (including services for alcohol and drug abuse) will have the opportunity to make recommendations to the SHCC respecting such services.

[(E) The State health authority, the State mental health authority, and other agencies of the State government, designated by the Governor, shall carry out those parts of the State health plan which relate to the government of the State.

[(F) If a State health plan as required by this subsection is not in effect for a State, the Secretary may not make any grant under section 1525 to the State Agency designated for such State under section 1521(b)(3).

[(3) Review annually the budget of each such health systems agency and report to the Secretary, for purposes of his review under section 1535(a), its comments on such budget.

[(4) Review applications submitted by such health systems agencies for grants under sections 1516 and 1640 and report to the Secretary its comments on such applications.

[(5) Advise the State Agency of the State generally on the performance of its functions.

[(6) Review annually and recommend approval or disapproval of (A) any State plan and any application (and any revision of a State plan or application) submitted to the Secretary as a condition to the receipt of any funds under allotments made to States under this Act, and (B) any application (and any revision of an application) submitted to the Secretary by a State for a grant or contract under any provision of law referred to in clause (A) for projects in more than one health service area of the State. Notwithstanding any other provision of this Act or any other Act referred to in the preceding sentence, the Secretary shall allow a SHCC sixty days to make the review required by such sentence. If a SHCC recommends disapproval of such a plan or application, the Secretary, after making a finding that such plan or application is not in conformity with the State health plan, may not make Federal funds available under such State plan or application. If the Secretary makes such a finding, he shall notify the Governor of his finding and the reasons therefor and advise him that he has thirty days in which to submit a revised State plan or application that conforms with the State health plan. If after reviewing a recommendation of a SHCC to disapprove such State plan or application, the Secretary decides to make such funds available, the decision by the Secretary to make such funds available shall be submitted to the SHCC and shall contain a detailed statement of the reasons for the decision.

[(d) No individual who as a member or employee of a SHCC shall, by reason of his performance of any duty, function, or activity required of, or authorized to be undertaken by, the SHCC, be liable for payment of damages under any law of the United States or any State (or political subdivision of a State) if he believed he was acting within the scope of his duty, function, or activity as such a member or employee, and acted, with respect to that performance, without gross negligence or malice toward any person affected by it.

[(e) No member of any SHCC may, in the exercise of any function of the SHCC described in subsection (c)(6), vote on any matter before the SHCC respecting any individual or entity with which such member has (or, within the twelve months preceding the vote, had) any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. Each SHCC shall require each of its members who has or has had such a relationship with an individual or entity involved in any matter before

the SHCC to make a written disclosure of such relationship before and action is taken by the SHCC with respect to such matter in the exercise of any function under subsection (c) and to make such relationship public in any meeting in which such action is to be taken.

[GRANTS FOR STATE HEALTH PLANNING AND DEVELOPMENT

[SEC. 1525. (a) The Secretary shall make grants to State health planning and development agencies designated under subsection (b)(2) or (b)(3) of section 1521 to assist them in meeting the costs of their operation. Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, but no funds under any grant to a State Agency may be obligated in any period in which a designation agreement is not in effect for such State Agency. The amount of any grant made under this subsection shall be determined by the Secretary, except that no grant to a designated State Agency may exceed 75 per centum of its operation costs (as determined under regulations of the Secretary) during the period for which the grant is available for obligation.

[(b) Grants under subsection (a) shall be made on such terms and conditions as the Secretary may prescribe; except that the Secretary may not make a grant to a State Agency unless he receives satisfactory assurances that the State Agency will expend in performing the functions prescribed by section 1523 during the fiscal year for which the grant is sought an amount of funds from non-Federal sources which is at least as great as the average amount of funds expended, in the three years immediately preceding the fiscal year for which such grant is sought, by the State, for which such State Agency has been designated, for the purposes for which funds under such grant may be used (excluding expenditures of a nonrecurring nature).

[(c) For the purpose of making payments under grants under subsection (a), there are authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1975, $30,000,000 for the fiscal year ending June, 30, 1976, $35,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $35,000,000 for the fiscal year ending September 30, 1980, and $40,000,000 for the fiscal year ending September 30, 1981.

[GRANTS FOR RATE REGULATION

[SEC. 1526. (a) For the purpose of demonstrating the effectiveness of State Agencies regulating rates for the provision of health care, the Secretary may make grants to a State Agency designated, under an agreement entered into under section 1521(b)(3), for a State which (in accordance with regulations prescribed by the Secretary has indicated an intent to regulate rates for the provision of health care within the States or to any other entity of the government of a State which has so indicated an intent to regulate such rates.

[((b)(1) An entity which receives a grant under subsection (a) shall—

[(A) provide the Secretary satisfactory evidence that the entity has under State law the authority to carry out rate regulation functions in accordance with this section and provide the Secretary a current budget for the performance of such functions by it;

[(B) set forth in such detail as the Secretary may prescribe the qualifications for personnel having responsibility in the performance of such functions, and shall have a professional staff for rate regulation, which staff shall be headed by a Director;

[(C) provide for such methods of administration as found by the Secretary to be necessary for the proper and efficient administration of such functions;

[(D) if it is a State Agency, perform its functions in accordance with procedures established and published by it, which procedures shall conform to the requirements of section 1532;

[(E) if it is a State Agency, comply with the requirements prescribed by paragraphs (6) through (12) of section 1522(b) with respect to the functions prescribed by subsection (a);

[(F) provide for the establishment of a procedure under which the entity will obtain the recommendation of the appropriate health systems agency prior to conducting a review of the rates charged or proposed to be charged for services; and

[(G) meet such other requirements as the Secretary may prescribe.

If an entity which is not a State Agency receives a grant under subsection (a), such entity shall coordinate its activities under the grant with the State Agency for the State in which such entity is located, share with the State Agency data obtained from such activities, and for purposes of such activities, develop with the State Agency criteria for the review of institutional health services, equipment, and facilities which guidelines are not in conflict with criteria adopted by the State Agency.

[(2) In prescribing requirements under paragraph (1) of this subsection, the Secretary shall consider the manner in which an entity shall perform its functions under a grant under subsection (a), including whether the entity should—

[(A) permit those engaged in the delivery of health services to retain savings accruing to them from effective management and cost control,

[(B) create incentives at each point in the delivery of health services for utilization of the most economical modes of services feasible,

[(C) document the need for and cost implications of each new service for which a determination of reimbursement rates is sought, and

[(D) employ for each type or class of person engaged in the delivery of health services—

[(i) a unit for determining the reimbursement rates, and

[(ii) a base for determining rates of change in the reimbursement rates,

which unit and base are satisfactory to the Secretary.

[(c) Grants under subsection (a) shall be made on such terms and conditions as the Secretary may prescribe, except that no

entity may receive more than three grants under subsection (a). Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, but no funds under any grant to a State Agency may be obligated in any period in which a designation agreement is not in effect for such State Agency.

[(d) Each entity which receives a grant under subsection (a) shall report to the Secretary (in such form and manner as he shall prescribe) on the effectiveness of the rate regulation program assisted by such grant. The Secretary shall report annually to the Congress on the effectiveness of the programs assisted by the grants authorized by subsection (a).

[(e) There are authorized to be appropriated to make payments under grants under subsection (a), $4,000,000 for the fiscal year ending June 30, 1975, $5,000,000 for the fiscal year ending June 30, 1976, $6,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $6,000,000 for the fiscal year ending September 30, 1980, $6,000,000 for the fiscal year ending September 30, 1981, and $6,000,000 for the fiscal year ending September 30, 1982.

[CERTIFICATE OF NEED PROGRAM

[SEC. 1527. (a) The certificate of need program required by section 1523(a)(4)(B) shall, in accordance with this section, provide for the following:

[(1) Review and determination of need under such program for—

[(A) major medical equipment and institutional health services, and

[(B) capital expenditures,

shall be made before the time such equipment is acquired, such services are offered, substantial expenditures are undertaken in preparation for such offering, or capital expenditures are obligated.

[(2) the acquisition and offering of only such equipment and services as may be found by the State Agency to be needed; and the obligation of only those capital expenditures found to be needed by the State Agency. Except as otherwise authorized by this section, review under the program of an application for a certificate of need may not be made subject to any criterion and the issuance of a certificate of need may not be made subject to any condition unless the criterion or condition directly relates to—

[(A) criteria prescribed by section 1532(c),

[(B) criteria prescribed by regulations of the Secretary promulgated under section 1532(a) before the date of the enactment of the Health Planning and Resources Development Amendments fo 1979, or

[(C) criteria prescribed by regulation by the State Agency in accordance with an authorization prescribed by State law.

The Secretary may not require a State to include in its program any criterion in addition to criteria described in subparagraphs (A) and (B).

[(3) An application for a certificate of need for an institutional health service, medical equipment, or a capital expenditure shall specify the time the applicant will require to make such service or equipment available or to obligate such expenditure and a timetable for making such service or equipment available or obligating such expenditure. After the issuance of a certificate of need, the State Agency shall periodically review the progress of the holder of the certificate in meeting the timetable specified in the approved application for the certificate. If on the basis of such a review the State Agency determines that the holder of a certificate is not meeting such timetable and is not making a good faith effort to meet it, the State Agency may, after considering any recommendation made by the health systems agency which received a report from the State Agency on such review, withdraw the certificate.

[(4) In issuing a certificate of need, the State shall specify in the certificate the maximum amount of capital expenditures which may be obligated under such certificate. The program shall, in accordance with regulations promulgated by the Secretary, prescribe the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceed the maximum specified in the certificate of need.

[(5) The program shall provide that (A) the requirements of section 1532 shall apply to proceedings under the program, and (B) each decision to issue a certificate of need (i) may only be issued by the State Agency, and (ii) shall, except in emergency circumstances that pose a threat to public health, be consistent with the State health plan in effect for such State under section 1524(c).

[(b)(1) Under the program a State shall not require a certificate of need for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provision of an inpatient institutional health service by—

[(A) a health maintenance organization or a combination of health maintenance organizations if (i) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (ii) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination;

[(B) a health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, (iii) the facility is or will be geographically located

so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (iv) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination, or

[(C) a health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations and on the date the application is submitted under paragraph (2) at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (iii) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization,

if, with respect to such offering, acquisition, or obligation, the State Agency has, upon application under paragraph (2), granted an exemption from such requirement to the organization, combination of organizations, or facility.

[(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under paragraph (1) from obtaining a certificate of need before offering an institutional health service, acquiring major medical equipment, or obligating capital expenditures unless—

[(A) it has submitted, at such time and in such form and manner as the State Agency shall prescribe, an application for such exemption.

[(B) the application contains such information respecting the organization, combination, or facility and the proposed offering, acquisition, or obligation as the State Agency may require to determine if the organization or combination meets the requirements of paragraph (1) or the facility meets or will meet such requirements, and

[(C) the State Agency approves such application.

In the case of a proposed health care facility (or portion thereof) which has not begun to provide institutional health services on the date an application is submitted under this paragraph with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of paragraph (1) when the facility first provides such services. The State Agency shall approve an application submitted under this paragraph if it determines that the applicable requirements of paragraph (1) are met.

[(3) Notwithstanding subsection (d), a health care facility (or any part thereof) or medical equipment with respect to which an exemption was granted under paragraph (1) may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired and a health care facility described in subparagraph (C) of paragraph (1) which was granted an exemption under paragraph (1) may not be used by any person other than the lessee described in such subparagraph unless—

[(A) the State Agency issues a certificate of need approving the sale, lease, acquisition, or use, or

[(B) the State Agency determines, upon application, that the entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling itnerest in or use the facility is (i) a health maintenance organization or a combination of health maintenance organizations which meets the requirements of clause (i) of subparagraph (A) of paragraph (1) and with respect to such facility or equipment, the entity meets the requirements of clauses (ii) and (iii) of such subparagraph (A), or (ii) a health care facility which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (B) of paragraph (1) and with respect to its patients meets the requirements of clause (iv) of such subparagraph.

[(4) In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, a State may under the program apply its certificate of need requirements only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services and then only to the extent that such offering, acquisition, or obligation is not exempt under paragraph (1).

[(5) Notwithstanding section 1532(c), if a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization apply for a certificate of need, such application shall be approved by the State Agency if the State Agency finds (in accordance with criteria prescribed by the Secretary by regulation) that—

[(A) approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll, and

[(B) the health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

Except as provided in paragraph (1) and notwithstanding subsection (d), a health care facility (or any part thereof) of medical equipment with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired unless the State Agency issues a certificate of need approving the sale, acquisition, or lease.

[(c) Notwithstanding section 1532(c), an application for a certificate of need for a capital expenditure which is required—

[(1) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations

[(2) to comply with State licensure standards, or

[(3) to comply with accreditation standards compliance with which is required to receive reimbursements under title XVII of the Social Security Act or payments under a State plan for medical assistance approval under title XIX of such Act,

shall be approved unless the State Agency finds that the facility or service with respect to which such capital expenditure is proposed to be made is not needed or that the obligation of such capital expenditure is not consistent with the State health plan in effect under section 1524. An application for a certificate of need approved under this subsection shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in paragraph (1) or to comply with the standards described in paragraph in paragraph (1) or to comply with the standards described in paragraph (2) or (3).

[(d)(1) Under the program a certificate of need shall, except as provided in subsection (b), be required for the obligation of a capital expenditure to acquire (either by purchase or under lease or comparable arrangement) an existing health care facility if—

[(A) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

[(B) the State Agency finds, within thirty days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the services or bed capacity of the facility will be changed in being acquired.

[(2) Before any person enters into a contractual arrangement to acquire an existing health care facility which arrangement will require the obligation of a capital expenditure, such person shall notify the state Agency of the State in which such facility is located of such person's intent to acquire such facility and of the services to be offered in the facility and its bed capacity. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the facility with respect to which the notice is given.

[(e)(1)(A) Except as provided in subsection (b) and subparagraph (B), under the program a certificate of need shall not be required for the acquisition of major medical equipment which will not be owned by or located in a health care facility unless—

[(i) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

[(ii) the State Agency finds, within thirty days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the equipment will be used to provide services for inpatients of a hospital.

[(B) The certificate of need program of a State may include a requirement for a certificate of need for an acquisition of major medical equipment which requirement is in addition to the requirement for a certificate of need established by subparagraph (A), except that after September 30, 1982, the certificate of need program of a

State may not be changed to include any such additional requirement.

[(2) Before any person enters into a contractual arrangement to acquire major medical equipment which will not be owned by or located in a health care facility, such person shall notify the State Agency of the State in which such equipment will be located of such person's intent to acquire such equipment and of the use that will be made of the equipment. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the equipment with respect to which the notice is given.

[(3) For purposes of this subsection, donations and leases of major medical equipment shall be considered acquisitions of such equipment, and an acquisition of medical equipment through a transfer of it for less than fair market value shall be considered an acquisition of major medical equipment if its fair market value is at least $150,000.

[(f) Notwithstanding section 1532(c), when an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

[(g) In approving or disapproving applications for certificates of need or in withdrawing certificates of need under such a program, a State Agency shall take into account recommendations made by health systems agencies within the State under section 1513(f).

[(h)(1) Subsection (a) does not require a certificate of need program to require a health care facility to obtain a certificate of need for the acquisition of major medical equipment to be used solely for research, institutional health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research if the acquisition, offering, or obligation does not—

[(A) affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

[(B) substantially change the bed capacity of the facility; or

[(C) substantially change the medical or other patient care services of the facility which were offered before the acquisition, offering, or obligation.

[(2)(A) Before a health care facility acquires major medical equipment to be used solely for research, offers an institutional health service solely for research, or obligates a capital expenditure solely for research, such health care facility shall notify in writing the State Agency of the State in which such facility is located of such facility's intent and the use to be made of such medical equipment, institutional health service, or capital expenditure.

[(B) Paragraph (1) does not apply with respect to the acquisition of major medical equipment, the offering of institutional health services or the obligation of a capital expenditure if—

[(i) the notice required by subparagraph (A) is not filed with the State Agency with respect to such acquisition, offering, or obligation, or

[(ii) the State Agency finds, within 60 days after the date it receives a notice in accordance with subparagraph (A) respecting the acquisition, offering, or obligation, that the acquisition, offering, or obligation will have the effect or make a change described in subparagraph (A), (B), or (C) of paragraph (1).

[(3) If major medical equiment is acquired, an institutional health service is offered, or a capital expenditure is obligated and a certificate of need is not required for such acquisition, offering, or obligation as provided in paragraph (1), such equipment or service or equipment or facilities acquired through the obligation of such capital expenditure may not be used in such a manner as to have the effect or to make a change described in subparagraph (A), (B), or (C) of paragraph (1) unless the State Agency issues a certificate of need approving such use.

[(4) For purposes of this subsection, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program.

[PART D—GENERAL PROVISIONS

[DEFINITIONS

[SEC. 1531. Except as otherwise provided, for purposes of this title:

[(1) The term "State" includes the District of Columbia.

[(2) The term "Governor" means the chief executive officer of a State or his designee.

[(3) The term "provider of health care" means an individual—

[(A) who is a direct provider of health care (including a physician, dentist, nurse, podiatrist, optometrist, physician assistant, or ancillary personnel employed under the supervision of a physician) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, outpatient facilities, and health maintenance organizations) in which such care is provided and, when required by State law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration;

[(B) who holds a fiduciary position with, or has a fiduciary interest in, any entity described in clause (ii) or (iv) of subparagraph (C) other than an entity described in such clause which is also an entity described in section 501(c)(3) of the Internal Revenue Code of 1954 and which does not have as its primary purpose the delivery of health care, the conduct of research, the conduct of instruction for health professionals, or the pro-

duction of drugs or articles described in clause (iii) of subparagraph (C);

[(C) who receives (either directly or through the individual's spouse) more than one-fifth of his gross annual income from any one or combination of—

[(i) fees or other compensation for research into or instruction in the provision of health care,

[(ii) entities engaged in the provision of health care or in research or instruction in the provision of health care,

[(iii) producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care, or

[(iv) entities engaged in producing drugs or such other articles;

[(D) who is the member of the immediate family of an individual described in subparagraph (A), (B), or (C); or

[(E) who is engaged in issuing any policy or contract of individual or group health insurance or hospital or medical service benefits.

Notwithstanding subparagraph (B), an individual shall not be considered a provider of health care solely because the individual is the member of the governing board of one or more entities described in clause (ii) or (iv) of subparagraph (C).

[(4) The term "health resources" includes health service, health professions personnel, and health facilities, except that such term does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

[(5) The term "institutional health services" means health services which (A) are provided through private and public hospitals, rehabilitation facilities, nursing homes, and other health care facilities, as defined by the Secretary by regulation, and (B) entail annual operating costs of at least the expenditure minimum. For purposes of this paragraph, the term "expenditure minimum" means $250,000 for the twelve-month period beginning with the month in which this paragraph is enacted and for each twelve-month period thereafter, $250,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index designated by the Secretary by regulation for purposes of making such adjustment.

[(6) For purposes of sections 1523 and 1527, the term "capital expenditure" means an expenditure—

[(A) made by or on behalf of a health care facility (as such a facility is defined in regulations prescribed under paragraph ((5)); and

[(B)(i) which (I) under generally accepted accounting principles is not property chargeable as an expense of operation and maintenance, or (II) is made to obtain by lease or comparable arrangement any facility or part hereof or any equipment for a facility or part; and

[(ii) which (I) exceeds the expenditure minimum, (II), substantially changes the bed capacity of the facility with respect

to which the expenditure is made, or (III) substantially changes the services of such facility.

For purposes of subparagraph (B)(ii)(I), the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B)(i) is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review under section 1527 shall be considered capital expenditures for purposes of sections 1523 and 1527, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such sections if a transfer of the equipment or facilities at fair market value would be subject to review under section 1527. For purposes of this paragraph, the term "expenditure minimum" means $600,000 for the twelve-month period beginning with the month in which this paragraph is enacted and for each twelve-month period thereafter, $600,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index maintained or developed by the Department of Commerce and designated by the Secretary by regulation for purposes of making such adjustment.

[(7) For purposes of sections 1523 and 1527, the term "major medical equipment" means medical equipment which is used for the provision of medical and other health services and which costs in excess of $400,000, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of such Act. In determining whether medical equipment has a value in excess of $400,000, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included.

[(8) The term "health maintenance organization" means a public or private organization, organized under the laws of any State, which—

[(A) is a qualified health maintenance organization under section 1310(d); or

[(B)(i) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out of area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in clause (i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (I) directly through physicians who are either employees or partners of

such organization, or (II) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

[(9) For purposes of paragraph (5) of this section and sections 1523(a)(4)(B) and 1527, the term "rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision. For purposes of the remaining provisions of this title, the term "rehabilitation facility" means an inpatient facility described in the preceding sentence and, in addition, an outpatient facility which is operated as described in such sentence.

[(10) The term "medically underserved population" has the same meaning as such term has under section 330(b)(3).

[(11) Any reference to the term "health" includes physical and mental health.

[(12) The term "physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by a State.

[PROCEDURES AND CRITERIA FOR REVIEWS OF PROPOSED HEALTH SYSTEM CHANGES

[SEC. 1532. (a) In conducting reviews pursuant to subsections (e), (f), and (g) of section 1513 or in conducting any other reviews of proposed or existing health services, each health systems agency shall (except to the extent approved by the Secretary) follow procedures, and apply criteria, developed and published by the agency in accordance with regulations of the Secretary; in performing its review functions under section 1523, a State Agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria, developed and published by the State Agency in accordance with regulations of the Secretary; and in performing its review functions a Statewide Health Coordinating Council shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the Council in accordance with regulations of the Secretary. Procedures and criteria for reviews by health systems agencies, State Agencies, and Statewide Health Coordinating Councils may vary according to the purpose for which a particular review is being conducted or the type of health services being reviewed. Health systems agencies, the State Agency, and, if appropriate, the Statewide Health Coordinating Council within each State shall cooperate in the development of procedures and criteria under this subsection to the extent appropriate to the achievement of efficiency in their reviews and consistency in criteria for such reviews. The Secretary shall review at least annually regulations promulgated under this section and provide opportunity for the submission of comments by health systems agencies, State Agencies, and Statewide Health Coordinating Councils on the need for the revision of such regulations. At least forty-five days before the initial publication of a regulation proposing a revision in a regulation of the Secretary under this section, the Secretary shall, with respect to such proposed revision, consult

with and solicit the recommendations from health systems agencies, State Agencies, and Statewide Health Coordinating Councils.

[(b) Each health systems agency, State Agency, and Statewide Health Coordinating Council shall include in the procedures required by subsection (a) at least the following:

[(1) Timely written notification to affected persons of the beginning of a review and, if a person has asked the entity conducting the review to place the person's name on a mailing list maintained by the entity, such notification shall be sent to such person.

[(2) Schedules for reviews which provide that no review shall, to the extent practicable, take longer than ninety days from the date the notification described in paragraph (1) is made, or in the case of non-substantive reviews, provision for a shortened review period. If, after a review has begun, a State Agency, health systems agency, or Statewide Health Coordinating Council requires, in accordance with paragraph (3), the person subject to the review to submit information respecting the subject of the review, such person shall be provided at least fifteen days to submit the information.

[(3) Provision for persons subject to a review to submit to the agency, State Agency, or Statewide Health Coordinating Council (in such form and manner as the agency or State Agency shall prescribe and publish) such information as the agency or State Agency may require concerning the subject of such review. Each health systems agency, State Agency, and Statewide Health Coordinating Council shall develop procedures to assure that requests for information in connection with a review under this title are limited to only that information which is necessary for the agency, State Agency, or Statewide Health Coordinating Council to perform the review.

[(4) Submission of applications (subject to review by a health systems agency, State Agency, or Statewide Health Coordinating Council) made under this Act or other provisions of law for Federal financial assistance for health services to the health systems agency, State Agency, Statewide Health Coordinating Council at such time and in such manner as it may require.

[(5) Submission of periodic reports by providers of health services and other persons subject to agency, State Agency, or Statewide Health Coordinating Council review respecting the development of proposals subject to review.

[(6) Provision for written findings which state the basis for any final decision or recommendation made by the agency, State Agency, or Statewide Health Coordinating Council.

[(7) Timely notification of providers of health services and other persons subject to agency, State Agency, or Statewide Health Coordinating Council review of the status of the agency, State Agency, or Statewide Health Coordinating Council review of the health services or proposals subject to review, findings made in the course of such review, and other appropriate information respecting such review.

[(8) Provision for public hearings in the course of agency, State agency, or Statewide Health Coordinating Council review if requested by persons directly affected by the review; and

provision for public hearings, for good cause shown, respecting agency, State Agency decisions, and Statewide Health Coordinating Council.

[(9) Preparation and publication of regular reports by the agency, State Agency, and Statewide Health Coordinating Council of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency, State Agency, and Statewide Health Coordinating Council (including a general statement of the findings and decisions made in the course of such reviews) since the publication of the last such report.

[(10) Access by the general public to all applications reviewed by the agency, State Agency, and Statewide Health Coordinating Council and to all other written materials essential to any agency, State Agency, or Statewide Health Coordinating Council review.

[(11) In the case of construction projects, submission to the agency and State Agency by the entities proposing the projects of letters of intent in such details as may be necessary to inform the agency and State Agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

[(12) The following procedural requirements with respect to proceedings under a certificate of need program:

[(A) Hearings under a certificate of need program shall be held before a State Agency or a health systems agency to which the State Agency has delegated the authority to hold such a hearing. In a hearing under the program, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing, any person directly affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matter, and a record of the hearing shall be maintained. The requirements of this subparagraph do not apply to hearings held by a health systems agency in the performance of a review under section 1513(f).

[(B) Any decision of a State Agency to issue or to not issue a certificate of need or to withdraw a certificate of need shall be based solely (i) on the review of the State Agency conducted in accordance with procedures and criteria it has adopted in accordance with this section and regulations promulgated under this section, and (ii) on the record established in administrative proceedings held with respect to the application for such certificate or the Agency's proposal to withdraw the certificate, as the case may be. Any decision of a State Agency to approve or disapprove an application for an exemption under section 1527(b) shall be based solely on the record established in the administrative proceedings held with respect to the application.

[(C)(i) The State Agency shall establish the period within which approval or disapproval by the State Agency

of applications for certificates of need and for exemptions under section 1527(b) shall be made. If, after a review has begun by the State Agency, the State Agency or health systems agency requires, in accordance with section 1532(b)(3), an applicant to submit information respecting the subject of the review, the period prescribed pursuant to the preceding sentence shall, at the request of the applicant, be extended fifteen days.

[(ii) If the State Agency fails to approve or disapprove an application within the applicable period under clause (i), the applicant may, within a reasonable period of time following the expiration of such period, bring an action in an appropriate State court to require the State Agency to approve or disapprove the application.

[(D) The program shall provide that each decision of the State Agency to issue, not to issue, or to withdraw a certificate of need or to approve or disapprove an application for an exemption under section 1527(b) shall, upon request of any person directly affected by such decision, be reviewed under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies or, if there is no such State law, by an entity (other than the State Agency) designated by the Governor.

[(E) Any person adversely affected by a final decision of a State Agency with respect to a certificate of need or an application for an exemption under section 1527(b) and a health systems agency if the decision respecting the certificate of need is inconsistent with a recommendation made by the agency to the State Agency with respect to the certificate of need may, within a reasonable period of time after such decision is made (and any administrative review of it completed), obtain judicial review of it in an appropriate State court. The decision of the State Agency shall be affirmed upon such judicial review unless it is found to be arbitrary or capricious or not made in compliance with applicable law.

[(F) There shall be no ex parte contacts—

[(i) in the case of an application for a certificate of need, between the applicant for the certificate of need, any person acting on behalf of the applicant, or any person opposed to the issuance of a certificate for the applicant and any person in the State Agency who exercise any responsibility respecting the application after the commencement of a hearing on the applicant's application and before a decision is made with respect for it; and

[(ii) in the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal and any person in the State Agency who exercises responsibility respecting withdrawal of the certificate after commencement of a hearing on the Agency's proposal to withdraw the

certificate of need and before a decision is made on withdrawal.

[The requirements of this paragraph are in addition to the requirements of the other paragraph of this subsection and may, as appropriate, apply to other review programs.

[(13)(A) In the case of reviews by health systems agencies under section 1513(f) and by State Agencies under paragraphs (4) and (5) of section 1523(a)—

[(i) provision for applications to be submitted in accordance with a timetable established by the reviewing agency,

[(ii) provision for such reviews to be undertaken in a timely fashion, and

[(iii) provision for all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area to be considered in relation to each other (but no less often than twice a year).

[(B) In the case of reviews by health systems agencies under section 1513(g) and by State Agencies under paragraph (6) of section 1523(a), provision for reviews of similar types of institutional health services affecting the same health service area to be considered in relation to each other.

[(c) Criteria required by subsection (a) for health systems agency, State Agency, and Statewide Health Coordinating Council review shall include consideration of at least the following:

[(1) The relationship of the health services being reviewed to the applicable HSP, AIP, and State health plan.

[(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

[(3) The need that the population served or to be served by such services has for such services.

[(4) The availability of alternatives, less costly, or more effective methods of providing such services.

[(5) The relationship of services reviewed to the existing health care system of the area in which such services are provided or proposed to be provided.

[(6) In the case of health services proposed to be provided—

[(A) the availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of such services,

[(B) the effect of the means proposed for the delivery of such services on the clinical needs of health professional training programs in the area in which such services are to be provided,

[(C) if such services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will access to the services for training purposes,

[(D) the availability of alternative uses of such resources for the provision of other health services, and

[(E) the extent to which such proposed services will be accessible to all the residents of the area to be served by such services.

[(7) The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics, specialty centers, and such other entities as the Secretary may by regulation prescribe.

[(8) The special needs and circumstances of health maintenance organizations.

[(9) In the case of a construction project—

[(A) the costs and methods of the proposed construction, including the costs and methods of energy provision, and

[(B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project and on the costs and charges to the public of providing health services by other persons.

[(10) The special circumstances of health service institutions and the need for conserving energy.

[(11) In accordance with section 1502(b), the factors which affect the effect of competition on the supply of the health services being reviewed.

[(12) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section 1502(b), and serve to promote quality assurance and cost effectiveness.

[(13) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

[(14) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past.

The criteria established by any health systems agency, State Agency, or Statewide Health Coordinating Council under paragraph (8) shall be consistent with the standards and procedures established by the Secretary under section 1306(c) of this Act.

[TECHNICAL ASSISTANCE FOR HEALTH SYSTEMS AGENCIES AND STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

[SEC. 1533. (a) The Secretary shall provide (directly or through grants or contracts, or both) to designated health systems agencies and State Agencies (1) assistance in developing their health plans and approaches to planning various types of health services, (2) technical materials, including methodologies, policies, and standards appropriate for use in health planning, and (3) other technical assistance as may be necessary in order that such agencies may properly perform their functions.

[(b) The Secretary shall include in the materials provided under subsection (a) the following:

[(1)(A) Specification of the minimum data needed to determine the health status of the residents of a health service area and the determinants of such status.

[(B) Specification of the minimum data needed to determine the status of the health resources and services of a health service area.

[(C) Specification of the minimum data needed to describe the use of health resources and services within a health service area.

[(2) Planning approaches, methodologies, policies, and standards which shall be consistent with the guidelines established by the Secretary under section 1501 for appropriate planning and development of health resources, and which shall cover the priorities listed in section 1502.

[(3) Guidelines for the organization and operation of health systems agencies and State Agencies including guidelines for—

[(A) the structure of a health systems agency, consistent with section 1512(b), and of a State Agency, consistent with section 1522;

[(B) the conduct of the planning and development processes;

[(C) the performance of health systems agency functions in accordance with section 1513; and

[(D) the performance of State Agency functions in accordance with section 1523.

[(c) In order to facilitate the exchange of information concerning health services, health resources, and health planning and resources development practice and methodology, the Secretary shall establish a national health planning information center to support the health planning and resources development programs of health systems agencies, State agencies, and other entities concerned with health planning and resources development; to provide access to current information or health planning and resources development; and to provide information for use in the analysis of issues and problems related to health planning and resources development.

[(d) The Secretary shall establish the following within one year of the date of enactment of this title:

[(1) A uniform system for calculating the aggregate cost of operation and the aggregate volume of services provided by health services institutions as defined by the Secretary in regulations. Such system shall provide for the calculation of the aggregate volume of be based on:

[(A) the number of patient days;

[(B) the number of patient admissions;

[(C) the number of out-patient visits; and

[(D) other relevant factors as determined by the Secretary.

[(2) A uniform system for cost accounting and calculating the volume of services provided by health services institutions. Such system shall:

[(A) Include the establishment of specific cost centers and, where appropriate, subcost centers.

[(B) Include the designation of an appropriate volume factor for each cost center.

[(C) Provide for an appropriate application of such system in the different types of institutions (including hospitals, nursing homes, and other types of health services

[(B) Specification of the minimum data needed to determine the status of the health resources and services of a health service area.

[(C) Specification of the minimum data needed to describe the use of health resources and services within a health service area.

[(2) Planning approaches, methodologies, policies, and standards which shall be consistent with the guidelines established by the Secretary under section 1501 for appropriate planning and development of health resources, and which shall cover the priorities listed in section 1502.

[(3) Guidelines for the organization and operation of health systems agencies and State Agencies including guidelines for—

[(A) the structure of a health systems agency, consistent with section 1512(b), and of a State Agency, consistent with section 1522;

[(B) the conduct of the planning and development processes;

[(C) the performance of health systems agency functions in accordance with section 1513; and

[(D) the performance of State Agency functions in accordance with section 1523.

[(c) In order to facilitate the exchange of information concerning health services, health resources, and health planning and resources development practice and methodology, the Secretary shall establish a national health planning information center to support the health planning and resources development programs of health systems agencies, State agencies, and other entities concerned with health planning and resources development; to provide access to current information or health planning and resources development; and to provide information for use in the analysis of issues and problems related to health planning and resources development.

[(d) The Secretary shall establish the following within one year of the date of enactment of this title:

[(1) A uniform system for calculating the aggregate cost of operation and the aggregate volume of services provided by health services institutions as defined by the Secretary in regulations. Such system shall provide for the calculation of the aggregate volume of be based on:

[(A) the number of patient days;

[(B) the number of patient admissions;

[(C) the number of out-patient visits; and

[(D) other relevant factors as determined by the Secretary.

[(2) A uniform system for cost accounting and calculating the volume of services provided by health services institutions. Such system shall:

[(A) Include the establishment of specific cost centers and, where appropriate, subcost centers.

[(B) Include the designation of an appropriate volume factor for each cost center.

[(C) Provide for an appropriate application of such system in the different types of institutions (including hospitals, nursing homes, and other types of health services

institutions), and different sizes of such types of institutions.

[(3) A uniform system for calculating rates to be charged to health insureres and other health institutions payors by health service institutions. Such system shall:

[(A) Be based on an all-inclusive rate for various categories of patients (including, but not limited to individuals receiving medical, surgical, pediatric, obstetric, and psychiatric institutional health services).

[(B) Provide that such rates reflect the true cost of providing services to each such category of patients. The system shall provide that revenues derived from patients in one category shall not be used to support the provision of services to patients in any other category.

[(C) Provide for an appropriate application of such system in the different types of institutions (including hospitals, nursing homes, and other types of health service institutions) and different sizes of such types of institutions.

[(D) Provide that differences in rates to various classes of purchasers (including health insurers, direct service payors, and other health institution payors) be based on justified and documented differences in the costs of operation of health service institutions made possible by the actions of such purchasers.

[(4) A classification system for health services institutions. Such classification system shall quantitatively describe and group health services institutions of the various types. Factors included in such classification system shall include—

[(A) the number of beds operated by an institution;

[(B) the geographic location of an institution;

[(C) the operation of a postgraduate physician training program by an institution; and

[(D) the complexity of services provided by an institution.

[(5) A uniform system for the reporting by health services institutions of—

[(A) the aggregate cost of operation and the aggregate volume of services, as calculated in accordance with the system established by the Secretary under paragraph (1);

[(B) the costs and volume of services at various cost centers, and subcost centers, as calculated in accordance with the system established by the Secretary under paragraph (2); and

[(C) rates, by category of patient and class of purchaser, as calculated in accordance with the system established by the Secretary under paragraph (3).

Such system shall provide for an appropriate application of such system in the different types of institutions (including hospitals, nursing homes, and other types of health services institutions) and different sizes of such institutions.

[CENTERS FOR HEALTH PLANNING

[SEC. 1534. (a) For the purposes of assisting the Secretary in carrying out this title, providing such technical and consulting assistance as health systems agencies and State Agencies may from time to time require, conducting research, studies and analyses of health planning and resources development, and developing health planning approaches, methodologies, policies, and standards, the Secretary shall by grants or contracts, or both, assist public or private nonprofit entities in meeting the costs of planning and developing new centers, and operating existing and new centers, for multidisciplinary health planning development and assistance. To the extent practicable, the Secretary shall provide assistance under this section so that at least five such centers will be in operation by June 30, 1976.

[(b)(1) No grant or contract may be made under this section for planning or developing a center unless the Secretary determines that when it is operational it will meet the requirements listed in paragraph (2) and it will be able to provide assistance and dissemination of information to health systems agencies and State Agencies as provided in subsections (a) and (c), and no grant or contract may be made under this section for operation of a center unless the center meets such requirements and is able to provide such assistance and dissemination of information.

[(2) The requirements referred to in paragraph (1) are as follows:

[(A) There shall be a full-time director of the center who possesses a demonstrated capacity for substantial accomplishment and leadership in the field of health planning and resources development, and there shall be such additional professional staffs as may be appropriate.

[(B) The staff of the center shall represent a diversity of relevant disciplines.

[(C) Such additional requirements as the Secretary may by regulation prescribe.

[(c) Centers assisted under this section (1) may enter into arrangements with health systems agencies and State Agencies for the provision of such services as may be appropriate and necessary in assisting the agencies and State Agencies in performing their functions under section 1513 or 1523, respectively, and (2) shall develop and use methods (satisfactory to the Secretary) to disseminate to such agencies and State Agencies planning approaches, methodologies (including methodologies to provide for education of new board members and new staff and continuing education of board members and staff of such agencies and State Agencies), policies, and standards.

[(d) For the purpose of making payments pursuant to grants and contracts under subsection (a) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1975, $8,000,000 for the fiscal year ending June 30, 1976, $10,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $6,000,000 for the fiscal year ending September 30, 1980, and $8,000,000 for the fiscal year ending September 30, 1981.

[REVIEW BY THE SECRETARY

[SEC. 1535. (a) The Secretary shall review and approve or disapprove the annual budget of each designated health systems agency and State Agency. In making such review and approval or disapproval the Secretary shall consider the comments of Statewide Health Coordinating Councils submitted under section 1524(c)(3). Information submitted to the Secretary by a health systems agency or a State Agency in connection with the Secretary's review under this subsection shall be made available by the Secretary, upon request, to the appropriate committees (and their subcommittees) of the Congress.

[(b) The Secretary shall prescribe performance standards covering the structure, operation, and peformance of the functions of each designated health systems agency and State Agency, and he shall establish a reporting system based on the performance standards that allows for continuous review of the structure, operation, and performance of the functions of such agencies.

[(c) The Secretary shall review in detail at least every three years the structure, operation, and performance of the functions of each designated health systems agency to determine—

[(1) the adequacy of the HSP of the agency for meeting the needs of the residents of the area for a healthful environment and for accessible, acceptable and continuous quality health care at reasonable costs, and the effectiveness of the AIP in achieving the system described in the HSP;

[(2) if the structure, operation, and performance of the functions of the agency meet the requirements of sections 1512(b) and 1513;

[(3) the extent to which the agency's governing body (and executive committee (if any)) represents the residents of the health service area for which the agency is designated;

[(4) the professional credentials and competence of the staff of the agency;

[(5) the appropriateness of the data assembled pursuant to section 1513(b)(1) and the quality of the analyses of such data;

[(6) the extent to which technical and financial assistance from the agency have been utilized in an effective manner to achieve goals and objectives of the HSP and AIP; and

[(7) the extent to which it may be demonstrated that—

[(A) the health of the residents in the agency's health service area has been improved;

[(B) the accessibility, acceptability, continuity, and quality of health care in such area has been improved; and

[(C) increases in costs of the provision of health care have been restrained.

[(d) The Secretary shall review in detail at least every three years the structure, operation, and performance of the functions of each designated State Agency to determine—

[(1) the adequacy of the State health plan of the Statewide Health Coordinating Council prepared under section 1524(c)(2) in meeting the needs of the residents of the State for a healthful environment and for accessible, acceptable, and continuous quality health care at reasonable cost;

[(2) if the structure, operation, and performance of the functions of the State Agency meet the requirements of sections 1522 and 1523;

[(3) the extent to which the Statewide Health Coordinating Council has a membership meeting, and has performed in a manner consistent with, the requirements of section 1524;

[(4) the professional credentials and competence of the staff of the State Agency;

[(5) the extent to which financial assistance provided under title XVI by the State Agency has been used in an effective manner to achieve the State's health plan under section 1524(c)(2); and

[(6) the extent to which it may be demonstrated that—

[(A) the health of the residents of the State has been improved;

[(B) the accessibility, acceptability, continuity, and quality of health care in the State has been improved; and

[(C) increases in costs of the provisions of health care have been restrained.

[SPECIAL PROVISIONS FOR CERTAIN STATES AND TERRITORIES

[SEC. 1536. Upon application of the chief executive officer of a State or the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, or American Samoa, it shall, upon approval of the application, be considered to be a State for purposes of this title and—

[(1) no health service area shall be established within it,

[(2) no health systems agency shall be designated for it,

[(3) the State Agency designated for it under section 1521 may, in addition to the functions prescribed by section 1523, perform the functions prescribed by section 1513 and shall be eligible to receive grants authorized by section 1640, and

[(4) the chief executive officer shall appoint the Statewide Health Coordinating Council prescribed by section 1524 in accordance with regulations of the Secretary.

An application made under this section for a fiscal year shall be made not later than November 1 in that fiscal year and shall contain the certification of the chief executive officer that the State is willing and able to meet the purposes of this title in such fiscal year without any health systems agency in the State.

[AUTHORIZATIONS FOR FISCAL YEAR 1982

[SEC. 1537. For grants and contracts under sections 1516(a), 1525(a), and 1534(a) there is authorized to be appropriated $102,00,000 for fiscal year 1982. Of the amount appropriated under this section, not more than $65,000,000 may be used for grants under section 1516(a).]

TITLE XV—HEALTH PLANNING

PART A—DEFINITIONS

SEC. 1501. For purposes of this title:

(1) The term "Governor" means the chief executive officer of a State or the designee of such chief executive officer.

(2) The term "State health services and resources allocation agency" or "designated agency" means the State agency which is designated by the Governor of a State to develop the State plan required under section 1518 and which is responsible for the administration of the State certificate of need program, if any, under part C.

(3) The term "local planning agency" means an entity—

(A) whose primary purpose is health planning and resource allocation;

(B) which is controlled by a governing body a majority of which are consumers and major purchasers; and

(C) which is—

(i) a nonprofit private corporation which is not controlled by any other legal entity and which engages in health planning functions for a defined geographic area consistent with the provisions of this title; or

(ii) a public regional planning body or single unit of general local government that is authorized by State or local law to carry out health planning functions for a defined geographic area consistent with the provisions of this title.

(4) The term "State health services and resources allocation plan" or "State plan" means a plan submitted by the designated agency and approved by the Governor of the State in accordance with section 1518.

(5) The term "State administrative program" or "State program" means the State administrative program required under section 1519.

(6) The term "health care facility" means a private or public hospital, rehabilitation facility, nursing home, or any other health care facility that the Governor of a State may designate by regulation, except that such term does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(7) The term "institutional health services" means health services which (A) are provided through health care facilities, and (B) entail annual operating costs of at least the expenditure minimum. For purposes of this paragraph, the term 'expenditure minimum' means $310,000 for the twelve-month period beginning on October 1, 1985, and for each twelve-month period thereafter, $310,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index designated by the Secretary by regulation for purposes of making such adjustment.

(8) The term "capital expenditure" means an expenditure—

(A) made by or on behalf of a health care facility; and

(B)(i) which (I) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (II) is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

(ii) which (I) exceeds the expenditure minimum, (II) substantially changes the bed capacity of the facility with respect to which the expenditure is made, or (III) substantially changes the services of such facility.

For purposes of subparagraph (B)(ii)(I), the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B)(i) is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review under part C shall be considered capital expenditures for purposes of such section, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such section if a transfer of the equipment or facilities at fair market value would be subject to review under such section. For purposes of this paragraph, the term "expenditure minimum" means $1,000,000 for the twelve-month period beginning on October 1, 1985, and for each twelve-month period thereafter, $1,000,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index designated by the Secretary by regulation for purposes of making such adjustment.

(9) The term "major medical equipment" means medical equipment which is used for the provision of medical and other health services and which costs in excess of the expenditure minimum, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (11) and (12) of section 1861(s) of such Act. In determining whether medical equipment has a value in excess of the expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included. For purposes of this paragraph and section 1530(e)(3), the term "expenditure minimum" means $400,000 for the twelve-month period beginning on October 1, 1985, and for each twelve-month period thereafter, $400,000, or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index designated by the Secretary by regulation for purposes of making such adjustment.

(10) The term "health maintenance organization" means a public or private organization, organized under the laws of any State, which—

(A) is a qualified health maintenance organization under section 1310(d); or

(B)(i) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out of area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in clause (i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (I) directly through physicians who are either employees or partners of such organization, or (II) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(11) The term "rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

(12) The term "National Council" means the National Health Planning and Resource Control Council established under section 1541.

PART B—HEALTH PLANNING GRANTS

AUTHORIZATION OF APPROPRIATIONS

SEC. 1511. (a) For the purpose of carrying out this part, and for administrative expenses under parts C and D, there are authorized to be appropriated $65,086,000 for fiscal year 1986, $69,200,000 for fiscal year 1987, and $73,800,000 for fiscal year 1988.

(b)(1) Not more than 10 percent of the total amount appropriated under subsection (a) for any fiscal year shall be available for such fiscal year for the administration of this part and parts B and C and for grants and contracts under section 1522.

(2) Of the amount available under paragraph (1) for any fiscal year, $1,000,000 shall be available for such fiscal year for grants and contracts under section 1522.

ALLOTMENTS TO STATES

SEC. 1512. (a)(1) From amounts appropriated under section 1511 for a fiscal year and available for allotments under this section, the Secretary shall allot to each State an amount that bears the same ratio to the available amounts for such fiscal year as the population of the State bears to the population of all States, except as provided by paragraph (2).

(2) Notwithstanding paragraph (1), the allotment of any State in any fiscal year under this subsection shall not be less than $237,600. If, under paragraph (1), the allotment of any State in any fiscal year will be less than $237,600, the Secretary shall increase the allotment of such State to $237,600 and shall proportionately reduce the allotments of all other States whose allotment exceeds $237,600 in a

manner that will insure that the allotment of each State in such fiscal year is at least $237,600.

(3) For purposes of this part, the population of a State shall be determined on the basis of the 1980 decennial census.

(b) To the extent that all the funds available for allotment in any fiscal year are not otherwise allotted to States because—

(1) one or more States have not submitted an application in accordance with section 1515 for such fiscal year;

(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment;

(3) part of the allotment of one or more States is returned to the Secretary for reallotment pursuant to section 1514(b)(3); or

(4) some State allotments are offset or repaid under section 1906(b)(3) (as such section applies to this title pursuant to section 1515(e));

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.

PAYMENTS UNDER ALLOTMENTS TO STATES

SEC. 1513. (a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotments under section 1512 from amounts appropriated for that fiscal year.

(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

USE OF ALLOTMENTS

SEC. 1514. (a) Amounts paid to a State under section 1513 from its allotment under section 1512 for any fiscal year may be used at the discretion of the State for any one or more of the following:

(1) the compilation or conduct of studies and analyses, and the collection of data, by—

(A) a State agency; or

(B) local public and private entities designated by the State,

with respect to the financing and delivery of health care in the State;

(2) the development by public or private entities designated by the State of local plans for the allocation of health services and resources in the applicable locality;

(3) the establishment of a certificate of need program in accordance with part C;

(4) the collection and dissemination by public and private entities designated by the State of purchaser information with respect to health care services; and

(5) assessments by public and private entities designated by the State of the access to health services by individuals residing in rural areas and by individuals who have no medical insurance or insufficient medical insurance.

(b)(1) A State shall use not less than 30 percent of the total amount paid to a State for a fiscal year under section 1513 from its allotment under section 1512 for a fiscal year to make grants to local planning agencies in the State, except as otherwise provided in this subsection.

(2) The Secretary shall grant a waiver from the provisions of paragraph (1) to any State which applies for such a waiver.

(3)(A) Any State which does not, for any fiscal year, make grants to local planning agencies in the State in the total amount required by paragraph (1) for such fiscal year shall return to the Secretary any amount which was required pursuant to paragraph (1) to be used for such grants but which was not used for such grants.

(B) If a State applies for and receives, pursuant to paragraph (2), a waiver from the provisions of paragraph (1), a State shall return to the Secretary any amount—

(i) which, pursuant to paragraph (1), the State would have been required to use for grants to local planning agencies in the State if such waiver had not been granted; and

(ii) which has not been used by the State for such grants for such fiscal year.

(C) Amounts returned to the Secretary under this paragraph shall be reallotted in accordance with section 1512(b).

(4) This subsection does not apply to any State for which, on September 30, 1985, an application under section 1536 (as such section was in effect on September 30, 1985) was approved and was in effect.

APPLICATION FOR ALLOTMENT

SEC. 1515. (a) No allotment may be made under this part to a State unless the Governor of the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall contain—

(1) a copy of the State plan required under section 1518;

(2) a copy of the State administrative program required under section 1519; and

(3) a description of the State certificate of need program, if any, under part C.

(b) The Secretary may not approve an application for an allotment under this part unless the Secretary determines that—

(1) the State plan complies with the provisions of this title;

(2) the State administrative program complies with the provisions of this title;

(3) the State certificate of need program, if any, complies with the requirements of this title; and

(4) the designated agency has sufficient authority under State law to enforce the State administrative program and the requirements of this title.

(c) The Federal share in any fiscal year of the cost of carrying out any application under this section shall be 75 percent.

(d) Notwithstanding subsections (a) and (b), the Secretary may make an allotment to a State under this part for fiscal year 1986 if the application of the State certifies to the Secretary that--

(1) the State will comply with the provisions of this title (as in effect on September 30, 1985); and

(2) the State will comply with the provisions of this title (as in effect on and after the effective date of the Health Planning and Resource Allocation Act of 1986) during fiscal year 1987, and each of the succeeding fiscal years.

(e) Except where inconsistent with the provisions of this part, the provisions of section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909 shall apply to this part in the same manner as such provisions apply to part A of title XIX.

GRANTS TO LOCAL PLANNING AGENCIES

SEC. 1516. (a) A local planning agency in a State may use a grant provided to such agency with funds paid to the State under this part to—

(1) provide information and opinions to the designated agency of such State;

(2) assist the designated agency of such State in health planning and resource allocation; and

(3) encourage the development of cost-effective alternatives to current health care financing and delivery systems.

(b) The State share in any fiscal year of the cost of carrying out an application of a local planning agency for a grant with funds paid to such State under this part shall be not more than 95 percent for fiscal year 1986, 85 percent for fiscal year 1987, and 75 percent for fiscal year 1988 and each succeeding fiscal year.

DESIGNATION OF STATE HEALTH SERVICES AND RESOURCES ALLOCATION AGENCY

SEC. 1517. (a) The Governor of each State shall designate a State agency as the State health services and resources allocation agency.

(b) The designated agency shall—

(1) develop and administer the State health services and resources allocation plan required under section 1518;

(2) develop and administer the State administrative program required under section 1519;

(3) administer the certificate of need program, if any, under part C; and

(4) prepare the annual report required under section 1521.

STATE PLAN

SEC. 1518. The designated agency of each State shall prepare the State health services and resources allocation plan. For each of the first three fiscal years beginning after the date on which a State plan is prepared, the State plan shall contain—

(1) a description of the health care needs of the State for services and facilities;

(2) an inventory of the health care services and facilities located in the State; and

(3) a comparison of the health care needs of the State identified pursuant to paragraph (1) with the services and facilities identified pursuant to paragraph (2) and a statement of how

the designated agency plans to allocate such services and facilities to meet the health care needs of the State.

STATE ADMINISTRATIVE PROGRAM

SEC. 1519. (a) The designated agency shall develop a State administrative program with respect to health planning and resource allocation. The program shall—

(1) provide for the performance within the State of the functions described in section 1517(b) and specify the designated agency as the sole agency responsible for the performance of such functions and for the administration of the State program;

(2) contain or be supported by satisfactory evidence that the designated agency has under State law the authority to carry out such functions and the State program;

(3) contain a current budget for the operation of the designated agency;

(4) contain provisions for a professional staff for health planning and resource allocation;

(5) require the designated agency to perform its functions in accordance with the established procedures and criteria of that agency;

(6) require the designated agency to comply with State administrative regulations required of other public agencies within the State;

(7) provide for fiscal control and accounting procedures consistent with State law; and

(8) contain provisions for a staff for the State Advisory Board established under section 1520.

(b) The State administrative program shall be approved by the Governor of the State.

STATE ADVISORY BOARDS

SEC. 1520. (a) The Governor of each State shall appoint a State Advisory Board to provide assistance to the designated agency with respect to health planning and resource allocation. The members of the Advisory Board shall be broadly representative of consumers of health care, including individuals and major purchasers, and of providers of health care. Two-thirds of the members of a State Advisory Board shall be major purchasers.

(b) Each State Advisory Board shall review the State plan required under section 1518, and the report of the designated agency required under section 1521, and shall prepare and transmit to the Governor of the State a report containing its comments on such plan and annual report. The designated agency shall include the report of the Advisory Board required under this section in the report required under section 1521.

(c) Each State Advisory Board shall meet at least once each year.

ANNUAL REPORT

SEC. 1521. (a) By December 1 of each year, each designated agency shall prepare and transmit to the Governor of the State an annual report. The annual report shall contain—

(1) a copy of the State plan required under section 1518;

(2) a summary describing the activities of the designated agency in carrying out the certificate of need program, if any, under part C;

(3) a summary statement, for each major type of provider of health care, of—

(A) total revenues obtained in the preceding fiscal year;

(B) per capita expenditures of each such type of provider during the preceding fiscal year;

(C) changes in prices charged for health care services and changes in the volume of use of health care services during the preceding fiscal year; and

(D) the rate of increase or decrease in per capita expenditures by each such provider during the preceding fiscal year; and

(4) the report of the State Advisory Board required under section 1520.

(b) By January 1 of each year, the Governor of each State shall transmit to the Secretary the annual report prepared by the designated agency under subsection (a), and the comments of the Governor on such report. The Governor shall publish and make the report, including such comments, available to the public.

CENTERS FOR HEALTH PLANNING

SEC. 1522. (a) For the purposes of assisting the Secretary in carrying out this title, providing such technical and consulting assistance as designated agencies may from time to time require, conducting research, studies and analyses of health planning and resources development, and developing health planning approaches, methodologies, policies, and standards, the Secretary shall by grants or contracts, or both, assist public or private nonprofit entities in meeting the costs of operating two centers for multidisciplinary health planning development and assistance. To the extent practicable, the Secretary shall provide assistance under this section to support centers which were in existence on September 30, 1985.

(b)(1) No grant or contract may be made under this section for operation of a center unless the Secretary determines that the center meets the requirements of paragraph (2) and is able to provide assistance and dissemination of information to designated agencies as provided in subsections (a) and (c).

(2) The requirements referred to in paragraph (1) are as follows:

(A) There shall be a full-time director of the center who possesses a demonstrated capacity for substantial accomplishment and leadership in the field of health planning and resources development, and there shall be such additional professional staff as may be appropriate.

(B) The staff of the center shall represent a diversity of relevant disciplines.

(C) Such additional requirements as the Secretary may by regulation prescribe.

(c) Centers assisted under this section (1) may enter into arrangements with designated agencies for the provision of such services as may be appropriate and necessary in assisting such agencies in performing their functions under this title, and (2) shall develop and

use methods (satisfactory to the Secretary) to disseminate to such agencies planning approaches, methodologies (including methodologies to provide for education of new board members and new staff and continuing education of board members and staff of such agencies), policies, and standards.

(d) Each center shall be located in the geographical half of the continental United States that it will serve.

PART C—CERTIFICATE OF NEED PROGRAM

SEC. 1530. (a) If a State establishes a certificate of need program, the program shall, in accordance with this section, provide for the following:

(1) Review and determination of need under such program for—

(A) major medical equipment and institutional health services, and

(B) capital expenditures,

shall be made before the time such equipment is acquired, such services are offered, substantial expenditures are undertaken in preparation for such offering, or capital expenditures are obligated.

(2) The acquisition and offering of only such equipment and services as may be found by the designated agency to be needed; and the obligation of only those capital expenditures found to be needed by the designated agency. Except as otherwise authorized by this section, review under the program of an application for a certificate of need may not be made subject to any criterion and the issuance of a certificate of need may not be made subject to any condition unless the criterion or condition directly relates to—

(A) criteria prescribed by section 1531(c),

(B) criteria prescribed by regulations of the Secretary promulgated under section 1532(a) (as such section was in effect before the date of enactment of the Health Planning and Resource Allocation Act of 1985), or

(C) criteria prescribed by regulation by the designated agency in accordance with an authorization prescribed by State law.

The Secretary may not require a State to include in its program any criterion in addition to criteria described in subparagraphs (A) and (B).

(3) An application for a certificate of need for an institutional health service, medical equipment, or a capital expenditure shall specify the time the applicant will require to make such service or equipment available or to obligate such expenditure and a timetable for making such service or equipment available or obligating such expenditure. After the issuance of a certificate of need, the designated agency shall periodically review the progress of the holder of the certificate in meeting the timetable specified in the approved application for the certificate. If on the basis of such a review, the designated agency determines that the holder of a certificate is not meeting such timetable

and is not making a good faith effort to meet it, the designated agency may withdraw the certificate.

(4) In issuing a certificate of need, the State shall specify in the certificate the maximum amount of capital expenditures which may be obligated under such certificate. The program shall, in accordance with regulations promulgated by the Secretary, prescribe the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceed the maximum specified in the certificate of need.

(5) The program shall provide that (A) the requirements of section 1531 shall apply to proceedings under the program, and (B) each decision to issue a certificate of need (i) may only be issued by the designated agency, and (ii) shall, except in emergency circumstances that pose a threat to public health, be consistent with the State plan in effect for such State under section 1518.

(b)(1) Under the program a State shall not require a certificate of need for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provision of an inpatient institutional health service by—

(A) a health maintenance organization or a combination of health maintenance organizations if (i) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (ii) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination;

(B) a health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (iv) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination; or

(C) a health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations and on the date the application is submitted under paragraph (2) at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (iii) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization,

if, with respect to such offering, acquisition, or obligation, the designated agency has, upon application under paragraph (2), granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under paragraph (1) from obtaining a certificate of need before offering an institutional health service, acquiring major medical equipment, or obligating capital expenditures unless—

(A) it has submitted, at such time and in such form and manner as the designated agency shall prescribe, an application for such exemption,

(B) the application contains such information respecting the organization, combination, or facility and the proposed offering, acquisition, or obligation as the designated agency may require to determine if the organization or combination meets the requirements of paragraph (1) or the facility meets or will meet such requirements, and

(C) the designated agency approves such application.

In the case of a proposed health care facility (or portion thereof) which has not begun to provide institutional health services on the date an application is submitted under this paragraph with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of paragraph (1) when the facility first provides such services. The designated agency shall approve an application submitted under this paragraph if it determines that the applicable requirements of paragraph (1) are met.

(3) Notwithstanding subsection (d), a health care facility (or any part thereof) or medical equipment with respect to which an exemption was granted under paragraph (1) may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired and a health care facility described in subparagraph (C) of paragraph (1) which was granted an exemption under such paragraph may not be used by any person other than the lessee described in such subparagraph unless—

(A) the designated agency issues a certificate of need approving the sale, lease, acquisition, or use, or

(B) the designated agency determines, upon application, that the entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling interest in or use the facility is (i) a health maintenance organization or a combination of health maintenance organizations which meets the requirements of clause (i) of subparagraph (A) of paragraph (1) and with respect to such facility or equipment, the entity meets the requirements of clause (ii) of such subparagraph, or (ii) a health care facility which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (B) of paragraph (1) and with respect to its patients meets the requirements of clause (iv) of such subparagraph.

(4) In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance

organizations, a State may under the program apply its certificate of need requirements only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services and then only to the extent that such offering, acquisition, or obligation is not exempt under paragraph (1).

(5) Notwithstanding section 1531(c), if a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization applies for a certificate of need, such application shall be approved by the designated agency if the designated agency finds (in accordance with criteria prescribed by the Secretary by regulation) that—

(A) approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll, and

(B) the health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

Except as provided in paragraph (1) and notwithstanding subsection (d), a health care facility (or any part thereof) or medical equipment with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired unless the designated agency issues a certificate of need approving the sale, acquisition, or lease.

(c) An application for a certificate of need for a capital expenditure which is required—

(1) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations,

(2) to comply with State licensure standards, or

(3) to comply with accreditation standards compliance with which is required to receive reimbursements under title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under title XIX of such Act,

shall be approved unless the designated agency finds that the facility or service with respect to which such capital expenditure is proposed to be made is not needed or that the obligation of such capital expenditure is not consistent with the State plan in effect under section 1518. An application for a certificate of need approved under this subsection shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in paragraph (1) or to comply with the standards described in paragraph (2) or (3).

(d)(1) Under the program a certificate of need shall, except as provided in subsection (b), be required for the obligation of a capital

expenditure to acquire (either by purchase or under lease or comparable arrangement) an existing health care facility if—

(A) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

(B) the designated agency finds, within thirty days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the services or bed capacity of the facility will be changed in being acquired.

(2) Before any person enters into a contractual arrangement to acquire an existing health care facility which arrangement will require the obligation of a capital expenditure, such person shall notify the designated agency of the State in which such facility is located of such person's intent to acquire such facility and of the services to be offered in the facility and its bed capacity. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the facility with respect to which the notice is given.

(e)(1)(A) Except as provided in subsection (b) and subparagraph (B), under the program a certificate of need shall not be required for the acquisition of major medical equipment which will not be owned by or located in a health care facility unless—

(i) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

(ii) the designated agency finds, within thirty days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the equipment will be used to provide services for inpatients of a hospital.

(B) The certificate of need program of a State may include a requirement for a certificate of need for an acquisition of major medical equipment. Such requirement may be in addition to the requirement for a certificate of need established by subparagraph (A).

(2) Before any person enters into a contractual arrangement to acquire major medical equipment which will not be owned by or located in a health care facility, such person shall notify the designated agency of the State in which such equipment will be located of such person's intent to acquire such equipment and of the use that will be made of the equipment. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the equipment with respect to which the notice is given.

(3) For purposes of this subsection, donations and leases of major medical equipment shall be considered acquisitions of such equipment, and an acquisition of medical equipment through a transfer of such equipment for less than fair market value shall be considered an acquisition of major medical equipment if the fair market value of such equipment is at least the expenditure minimum established under section 1501(9).

(f) Notwithstanding section 1531(c), when an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteo-

pathic and allopathic physicians and their patients. The designated agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

(g)(1) Subsection (a) does not require a certificate of need program to require a health care facility to obtain a certificate of need for the acquisition of major medical equipment to be used solely for research, institutional health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research if the acquisition, offering, or obligation does not—

(A) affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

(B) substantially change the bed capacity of the facility; or

(C) substantially change the medical or other patient care services of the facility which were offered before the acquisition, offering, or obligation.

(2)(A) Before a health care facility acquires major medical equipment to be used solely for research, offers an institutional health service solely for research, or obligates a capital expenditure solely for research, such health care facility shall notify in writing the designated agency of the State in which such facility is located of such facility's intent and the use to be made of such medical equipment, institutional health service, or capital expenditure.

(B) Paragraph (1) does not apply with respect to the acquisition of major medical equipment, the offering of institutional health services, or the obligation of a capital expenditure if—

(i) the notice required by subparagraph (A) is not filed with the designated agency with respect to such acquisition, offering, or obligation, or

(ii) the designated agency finds, within sixty days after the date it receives a notice in accordance with subparagraph (A) respecting the acquisition, offering, or obligation, that the acquisition, offering, or obligation will have the effect or make a change described in subparagraph (A), (B), or (C) of paragraph (1).

(3) If major medical equipment is acquired, an institutional health service is offered, or a capital expenditure is obligated and a certificate of need is not required for such acquisition, offering, or obligation as provided in paragraph (1), such equipment or service or equipment or facilities acquired through the obligation of such capital expenditure may not be used in such a manner as to have the effect or to make a change described in subparagraph (A), (B), or (C) of paragraph (1) unless the designated agency issues a certificate of need approving such use.

(4) For purposes of this subsection, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program.

PROCEDURES AND CRITERIA FOR REVIEW OF CERTIFICATE OF NEED DETERMINATIONS

SEC. 1531. (a) In conducting any review of an application for a certificate of need or an exemption therefrom under section 1530, or in making any other determination under such section, the designated agency must follow procedures and apply criteria, developed and published by the designated agency in accordance with regulations of the Secretary.

(b) Each designated agency shall include in the procedures required by subsection (a) at least the following:

(1) Timely written notification to affected persons of the beginning of a review of an application for a certificate of need or an exemption therefrom under section 1530, or of a review of compliance with such a certificate.

(2)(A) The establishment of a time period for the approval or disapproval by the designated agency of applications for certificates of need and exemptions therefrom under section 1530. The time period established pursuant to this subparagraph may vary with the type of project for which an application is being made, as specified by the designated agency pursuant to regulation, but may not exceed one hundred and twenty days.

(B) Provisions that an application for a certificate of need or an exemption therefrom under section 1530 shall be considered to have been approved if the designated agency has not made a decision with respect to such application by the end of the one hundred and twenty day period referred to in subparagraph (A).

(3)(A) Provisions for persons subject to a review to submit to the designated agency (in such form or manner as the designated agency shall by regulation require) such information as the designated agency may require concerning the subject of such review. Each designated agency shall develop procedures to assure that requests for information in connection with a review under this part are limited to only that information which is necessary for the designated agency to perform the review.

(B) The establishment of an additional time period for the submission under subparagraph (A) of additional information with respect to an application for a certificate of need or an exemption therefrom under section 1530, which shall be at least fifteen calendar days. Such additional time period shall not be included in the one hundred and twenty day period described in paragraph (2)(A).

(4) Submission of periodic reports by providers of health services and other persons subject to review by the designated agency respecting the development of proposals subject to review.

(5) Provisions for written findings which state the basis for any final decision or recommendation made by the designated agency.

(6) Timely notification of providers of health services and other persons subject to review by the designated agency of the health services or proposals subject to review, findings made in

the course of such review, and other appropriate information respecting such review.

(7) Provisions for public hearings in the course of review by the designated agency if requested by persons directly affected by the review; and provisions for public hearings, for good cause shown, respecting designated agency decisions.

(8) Access by the general public to all applications reviewed by the designated agency and to all other written materials essential to any designated agency.

(9) In the case of construction projects, submission to the designated agency by the entities proposing the projects of letters of intent in such details as may be necessary to inform the designated agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

(10) Provisions requiring that hearings will be held before the designated agency in which—

(A) any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing;

(B) any person directly affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matter; and

(C) a record of the hearing shall be maintained.

(11) Provisions requiring that—

(A) any decision of a designated agency to issue or to not issue a certificate of need or to withdraw a certificate of need shall be based solely (i) on the review of the designated agency conducted in accordance with procedures and criteria the designated agency has adopted in accordance with this section and regulations promulgated under this section, and (ii) on the record established in administrative proceedings held with respect to the application for such certificate or the designated agency's proposal to withdraw the certificate, as the case may be; and

(B) any decision of a designated agency to approve or disapprove an application for an exemption under section 1530(b) shall be based solely on the record established in the administrative proceedings held with respect to the application.

(12) Provisions requiring that—

(A) each decision of the designated agency with respect to a certificate of need or an application for an exemption under section 1530(b) shall, upon request of any person directly affected by such decision, be reviewed with respect to procedural matters under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies or, if there is no such State law, by an entity (other than the designated agency) designated by the Governor; and

(B) no decision of the designated agency with respect to a certificate of need or an application for an exemption under

section 1530(b) shall be subject to de novo administrative review.

(13) Provisions permitting any person adversely affected by a final decision of a designated agency with respect to a certificate of need or an application for an exemption under section 1530(b) to, within a reasonable period of time after such decision is made (and any administrative review of such decision is completed), obtain judicial review of such decision in an appropriate State court. The decision of the designated agency shall be affirmed upon such judicial review unless it is found to be arbitrary or capricious or not made in compliance with applicable law.

(14) Provisions requiring that there shall be no ex parte contacts—

(A) in the case of an application for a certificate of need, between the applicant for the certificate of need, any person acting on behalf of the applicant, or any person opposed to the issuance of a certificate for the applicant and any person in the designated agency who exercises any responsibility respecting the application after the commencement of a hearing on the applicant's application and before a decision is made with respect to such application; and

(B) in the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal and any person in the designated agency who exercises responsibility respecting withdrawal of the certificate after commencement of a hearing on the designated agency's proposal to withdraw the certificate of need and before a decision is made on withdrawal.

(c) Criteria required by subsection (a) for designated agency review shall include consideration of at least the following:

(1) The relationship of the health services being reviewed to the State plan.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

(3) The need that the population served or to be served by such services has for such services.

(4) The availability of alternative, less costly, or more effective methods of providing such services.

(5) The relationship of services reviewed to the existing health care system of the area in which such services are provided or proposed to be provided.

(6) In the case of health services proposed to be provided—

(A) the availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of such services;

(B) the effect of the means proposed for the delivery of such services on the clinical needs of health professional training programs in the area in which such services are to be provided;

(C) if such services are to be available in a limited number of facilities, the extent to which the health profes-

sions schools in the area will have access to the services for training purposes;

(D) the availability of alternative uses of such resources for the provision of other health services; and

(E) the extent to which such proposed services will be accessible to all the residents of the area to be served by such services.

(7) The special needs and circumstances of health maintenance organizations.

(8) In the case of a construction project—

(A) the costs and methods of the proposed construction, including the costs and methods of energy provision; and

(B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project and on the costs and charges to the public of providing health services by other persons.

(9) The special circumstances of health service institutions and the need for conserving energy.

(10) The factors which affect the effect of competition on the supply of the health services being reviewed.

(11) Improvements or innovations in the financing and delivery of health services which foster competition, and serve to promote quality assurance and cost-effectiveness.

(12) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(13) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past.

PART D—OTHER FEDERAL RESPONSIBILITIES

NATIONAL HEALTH PLANNING AND RESOURCE CONTROL COUNCIL

SEC. 1541. (a) There is established a National Health Planning and Resource Control Council. The National Council shall—

(1) review and analyze the annual reports received by the Secretary from States under section 1521;

(2) provide the Secretary with advice and assistance with respect to the report of the Secretary to the Congress required under section 1542; and

(3) make recommendations to the Secretary with respect to health care planning and resource allocation in order to assist the Secretary in carrying out the purposes of this title.

(b) The National Council shall consist of fifteen members appointed by the Secretary as follows:

(1) A majority of the members shall be representatives of major purchasers.

(2) Two members shall be the heads of designated agencies.

(3) Two members shall be representatives of providers of health care.

(4) One member shall be an individual consumer of health care.

(c) The Chairman of the National Council shall be elected by the members of the National Council from among the members who are representatives of major purchasers.

(d) The term of office of a member of the National Council shall be four years, except that the Secretary shall divide the initial appointments to the National Council into three groups of five members each for initial terms of one, two, and three years.

(e) At least eight members of the National Council shall constitute a quorum, but a lesser number may hold hearings. A vacancy in the National Council shall not affect its authority.

(f) Each member of the National Council shall receive compensation at a rate equal to the daily rate prescribed for level 6 of the Senior Executive Schedule established under section 5382 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties as a member of the National Council, and shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties as a member of the National Council.

ANNUAL REPORT

SEC. 1542. By March 1 of each year, the Secretary shall prepare and transmit to the Congress a report with respect to activities conducted under this title during the preceding fiscal year. The report shall contain—

(1) a summary of the activities of the States with respect to health planning, resource allocation, and cost containment;

(2)(A) a comparison of the cost of health care in each State with the cost of health care in all other States;

(B) a comparison of the cost of health care provided by each type of provider of health care in a State with the cost of health care by each such type of provider in all other States;

(C) a comparison of the costs referred to in subparagraphs (A) and (B) among States receiving payments under part B and States not receiving any payments under this title;

(3) a specification, for the Nation and for each State, of—

(A) total revenues obtained from health care services;

(B) the per capita cost of health care services and the rate of increase of such costs from the preceding fiscal year; and

(C) a comparison of the change in the per capita cost of health care services during the preceding fiscal year to the volume of services provided during such year, and a comparison of the change in such per capita cost to the price of services provided during such year; and

(4) a description of the changes in the supply of health care resources during the preceding fiscal year.

○